

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

Lucille Patricia Smith, ... Respondent,

v.

The Heirs at Law of Benjamin Days a/k/a Ben Deas a/k/a Daise, the heirs at law of Samuel Daise, the heirs at law of Anna Daise, the heirs at law of Manny Daise, the heirs at law of George Daise, the heirs at law of Marie Daise Middleton, the heirs at law of Rose Middleton, the heirs at law of Charlie Middleton, the heirs at law of W.H. Deas, Howard Chaplin, Harriet Chaplin, and all other persons unknown, having or claiming any rights, title or interest in or lien upon the real property described in the complaint herein, being designated collectively as John Doe or Sarah Roe, including all minors, persons in the Armed Forces, and insane persons and all other persons under any other disability who might have or claim to have any right, title, estate or interest in or lien upon the real property described in the complaint herein,

Of whom Howard Chaplin and Harriet Chaplin are the Appellants.

RECORD ON APPEAL

Bruce R. Hoffman,
Law Office of Bruce R. Hoffman, LLC
574 Sea Island Parkway
Saint Helena Island, South Carolina 29920
(843) 838-5290
Attorney for Defendants/Appellants

Alysoun Eversole
Eversole Law Firm, P.C.
1509 King Street
Beaufort, South Carolina 29902
(843) 379-3333
Attorney for Plaintiff/Respondent

ORIGINAL

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

LUCILLE PATRICIA SMITH)

Plaintiff,)

vs.)

THE HEIRS AT LAW OF BENJAMIN)

DAYS a/k/a, BEN DEAS a/k/a DAISE)

THE HEIRS AT LAW OF SAMUEL)

DAISE, THE HEIRS AT LAW OF ANNA)

DAISE, THE HEIRS AT LAW OF)

MANNY DAISE, THE HEIRS AT LAW)

OF GEORGIE DAISE, THE HEIRS AT)

LAW OF MARIE DAISE MIDDLETON,)

THE HEIRS AT LAW OF ROSE)

MIDDLETON, THE HEIRS AT LAW OF)

CHARLIE MIDDLETON, THE HEIRS)

AT LAW OF W.H. DEAS, HOWARD)

CHAPLIN, HARRIET CHAPLIN, and all)

other persons unknown, having or claiming)

any rights, title or interest in or lien upon the)

real property described in the Complaint)

herein, being designated collectively as)

JOHN DOE or SARAH ROE, including all)

minors, persons in the Armed Forces, and)

insane persons and all other persons under)

any other disability who might have or claim)

to have any right, title, estate or interest in)

or lien upon the real property described in)

the Complaint herein,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-2608

Non-Jury

2010 JUL 19 PM 4:01
CLERK OF COURT
JAMES H. HARRIS
JAMES H. HARRIS
JAMES H. HARRIS

ORDER OF REFERENCE

IT APPEARING that this action involves quieting title to real property; and it further appearing that this is a proper matter to refer to the Master-in-Equity for Beaufort County in accordance with Rule 53(b) of the South Carolina Rules of Civil Procedure; upon request of Alysoun M. Eversole, Esq., Attorney for the Plaintiff; it is

ORDERED that this case be, and the same is hereby referred to the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County, under Rule 53(e)(1), SCRCP, for the purpose

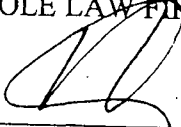
of making appropriate findings of fact and conclusions of law with the authority to enter a final judgment in this case. Any appeal from the final judgment in this case shall be directly to the Supreme Court of South Carolina or the Court of Appeals as provided by the South Carolina Appellate Court Rules.


~~Clerk~~ ~~Chief Administrative Judge~~
Beaufort County, South Carolina

Beaufort, South Carolina
7-15, 2010

I SO MOVE:

EVERSOLE LAW FIRM, P.C.


Alysoun M. Eversole
1509 King Street
Beaufort, SC 29902
Phone: (843)379-3333
Fax: (843)379-5558
ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

LUCILLE PATRICIA SMITH)

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Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-2608

Non-Jury

**ORDER OF SERVICE
BY PUBLICATION**

BEAUFORT COUNTY, S.C.
CLERK OF COURT

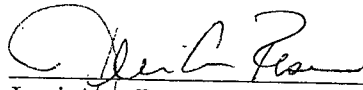
11 MAR - 8 PM 4:28

It appearing to my satisfaction from the Affidavit of the Plaintiff above named by the Plaintiff's Attorney, as well as from the Complaint of the Plaintiff on file in this action, that the above entitled action has been commenced and is now pending; that the Plaintiff's Complaint is duly verified and has been filed with the Clerk of Court for Beaufort County, South Carolina; that a cause of action exists in favor of the above named Plaintiff against the above named Defendants as fully set forth in the Complaint, the grounds of which are for having the rights of the parties herein to the real estate described in said action adjudicated and to forever bar all

claims, rights, titles and interests and estate or liens, other than those of the Plaintiff, in or to the real estate described in the said action; that the above named Court has jurisdiction of the subject matter of this action; and that the Plaintiff is unable with due diligence to make the service of the Summons in said action upon the said Defendants.

NOW, THEREFORE, on Petition of Alysoun M. Eversole, Attorney for the Plaintiff, it is

ORDERED, that the service of the Summons in said action upon the Defendants be made by publication thereof in The Beaufort Gazette, a newspaper published in the County of Beaufort, State of South Carolina, which said newspaper is hereby designated as the most likely to give notice to the said Defendants of the pendency of said action, once a week for three (3) consecutive weeks, and that the first publication of the Summons be made within thirty (30) days from the date of this Order.



Jerri Ann Roseneau, Clerk of Court
Beaufort County, South Carolina

Beaufort, South Carolina

8 day of March, 2011.

P1A24

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

LUCILLE PATRICIA SMITH)

Plaintiff,)

vs.)

THE HEIRS AT LAW OF BENJAMIN)

DAYS a/k/a, BEN DEAS a/k/a DAISE)

THE HEIRS AT LAW OF SAMUEL)

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or lien upon the real property described in)

the Complaint herein,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-2608

Non-Jury

SEP - 7 PM 4:53
CLERK OF COURT
BEAUFORT COUNTY, S.C.

ORDER OF DEFAULT

THIS MATTER comes before me by Affidavit of Default filed by Alysoun M. Eversole, Attorney for the Plaintiff.

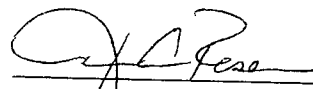
IT APPEARING to this Court that the Summons and Complaint was properly served upon Defendants THE HEIRS AT LAW OF BENJAMIN DAYS a/k/a BEN DEAS a/k/a DAISE, THE HEIRS AT LAW OF SAMUEL DAISE, THE HEIRS AT LAW OF ANNA DAISE, THE HEIRS AT LAW OF MANNY DAISE, THE HEIRS AT LAW OF GEORGIE DAISE, THE

HEIRS AT LAW OF MARIE DAISE MIDDLETON, THE HEIRS AT LAW OF ROSE MIDDLETON, THE HEIRS AT LAW OF CHARLIE MIDDLETON and all other persons unknown, designated collectively as John Doe and Sarah Roe, by publication in the Beaufort Gazette for three consecutive weeks as shown by the Affidavit of Sara Johnson Borton filed in this action on April 6, 2011, and that more than thirty (30) days have passed since service by publication and that the said Defendants have failed to Answer or otherwise plead and are now in default.

It is now therefore

ORDERED, ADJUDGED AND DECREED that the Defendants THE HEIRS AT LAW OF BENJAMIN DAYS a/k/a BEN DEAS a/k/a DAISE, THE HEIRS AT LAW OF SAMUEL DAISE, THE HEIRS AT LAW OF ANNA DAISE, THE HEIRS AT LAW OF MANNY DAISE, THE HEIRS AT LAW OF GEORGIE DAISE, THE HEIRS AT LAW OF MARIE DAISE MIDDLETON, THE HEIRS AT LAW OF ROSE MIDDLETON, THE HEIRS AT LAW OF CHARLIE MIDDLETON and all other unknown persons designated collectively as John Doe and Sarah Roe having failed to Answer or otherwise plead, are now in default and the Plaintiff is entitled to the relief requested in the Complaint.

AND IT IS SO ORDERED.



Judge, Court of Common Pleas
Beaufort County

Beaufort, South Carolina
This 9 day of Sept, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LUCILLE PATRICIA SMITH

Plaintiff,

vs.

THE HEIRS AT LAW OF BENJAMIN
DAYS a/k/a, BEN DEAS a/k/a DAISE
THE HEIRS AT LAW OF SAMUEL
DAISE, THE HEIRS AT LAW OF ANNA
DAISE, THE HEIRS AT LAW OF
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MIDDLETON, THE HEIRS AT LAW OF
CHARLIE MIDDLETON, THE HEIRS
AT LAW OF W.H. DEAS, HOWARD
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or lien upon the real property described in
the Complaint herein,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-2608

Non-Jury

JUDGMENT, DECREE &
FINAL ORDER

7-2-2011-5 PM 4:35

THIS MATTER CAME BEFORE ME upon the trial of this case on August 30, 2011. The Court has asked that Trial Briefs be prepared by counsel. Present at the trial was the Plaintiff and her attorney Alysoun M. Eversole, Esq. and the Defendants Howard and Harriett Chaplin and their attorney J. Thomas Mikell, Esq.

The Plaintiff, Lucille Patricia Smith, brought her cause of action to quiet the title to eight

(8) acres of property she acquired from her father, James D. Smith, by deed dated December 3, 1999. The adjoining land owners were personally served with the Summons and Complaint and the unknown heirs at law were served by publication. An Order appointing William M. Bowen as Guardian ad Litem Nisi was entered and he filed his Answer and Affidavit confirming that no unknown persons applied through him for the appointment of a Guardian ad Litem. An Order of Default has been entered against the unknown heirs at law of Benjamin Days and the Heirs at Law of W.H. Deas, adjoining landowners.

The Defendant, the Heirs at law of W.H. Deas, by and through Bernice D. Davis, filed an Affidavit/Answer admitting the allegations in the Complaint. Ms. Davis was properly served with a notice of final hearing but did not make an appearance at trial.

The Defendants Howard Chaplin, Jr. and Harriet Chaplin filed their Answer denying the allegations in the Complaint generally and raised the defenses of Stale Demand, Waiver and Laches, and Counterclaimed on the grounds of Adverse Possession and Adverse Possession under Color of Title.

An Order of Reference to the Master was filed on July 16, 2010.

After hearing the testimony of the witnesses and reviewing the evidence presented I find the following:

THE PLAINTIFF'S EVIDENCE

1. The property being quieted and the subject of this action is eight (8) acres known as Lot 2, Ed Capers Plantation, Tax Map No. R300-021-000-0018-0000.

2. There are two deeds in the chain of title of public record:

- i. Deed of James D. Smith to Lucille P. Smith dated December 3, 1999, the preamble reciting that James D. Smith is the sole heir at law of Benjamin Days; and
- ii. Deed from Daniel F. Appleton to Benjamin Days dated January 14, 1892.

3. There was no probate administration for Benjamin Days, Deas or Daise.

4. There are no recorded plats for Ed Capers Plantation as a whole, nor are there any recorded plats for Lot 2.

5. David Gasque is a land surveyor and was qualified as an expert without objection. He testified that he was employed by the Plaintiff to do a survey of Lot 2, Ed Capers Plantation.

Plaintiff's Exhibit 2. He testified that there is no subdivision plat for Ed Capers Plantation that



can be found of public record or otherwise. The best guidance, therefore, are the tax maps and plats of adjoining landowners. He based the north boundary line of Lot 2 on a deed and plat prepared by Neils Christensen of Lots 3 and 4. **Plaintiff's Exhibit 6.** He determined the southern boundary line by from the deeds in the chain for Lot 1 and established and customary principles of surveying.

6. James D. Smith testified that he is the Plaintiff's father. He is 72 years old. He grew up on Lot 2 having been raised by Samuel and Anna Daise. Samuel was the son of Benjamin Days. James was left by his mother to be raised by Samuel and Anna when he was very young. He always believed he was adopted by Samuel and Anna. They lived in a house on the eight acre lot. He also testified that Samuel was his "mother's uncle". The other children of Samuel and Anna were much older than him. They were Manny Daise, Marie Daise and Georgie Daise. They are all deceased and did not have spouses or children that survived them. Growing up he was known as Bobby Daise but had to use his birth name "James Smith" when he joined the army because that was the name on his birth certificate. He uses "D" in his name, James D. Smith; it stands for Daise. The house he grew up in deteriorated and was taken down years ago. After that he continued to plant on the property for some years, until he became too old to do it. He testified that Marie and he went to the court house in the 1970's and had the tax records changed to show him as the owner of the property. He has paid all the taxes on the property ever since. He wanted his daughter, the Plaintiff, to have the property so he deeded it to her. James now lives down the street from the property and sees it on a regular basis. He stated he once gave Mr. Chaplin permission to plant potatoes on his property but Mr. Chaplin never did so.

7. The Plaintiff, Lucille Patricia Smith testified that she recalled staying on the property for a while when she was young. She described some memories about the property and the old house, and her relationship with Marie, who she always called Aunt Marie. The Plaintiff identified the location of the eight (8) acres on the tax assessor aerals that were entered into evidence with the Affidavit of Donna Reardon.

8. At the end of the Plaintiff's case the Defendant Howard Chaplin moved for a directed verdict, arguing that James Smith did not prove he was adopted. After argument the Court reserved ruling on the motion.

THE DEFENDANT'S EVIDENCE

9. The Defendant Howard Chaplin testified that he was born and raised on Storyteller Road. He purchased some property from Mr. Cuthbert after Mr. Cuthbert "laid out" the property to him. He said his property went up to the Sander's ditch. He testified that he started clearing in 1997 and planted pines in 1998. He said he came back in 1999 and there were posts across the road. After that, Mr. Chaplin was very vague about the dates or years that he did anything on the property although he said he planted potatoes "for a couple of years" on the property and cleared one acre of it.

10. Mr. Chaplin, acknowledged that his deed from Mr. Cuthbert, **Plaintiff's Exhibit 2**, is clear that he acquired title to Lot 1, Ed Capers Plantation consisting of eight (8) acres, not 16 acres. Mr. Chaplin conceded that he began clearing the one acre of property in late 2008 or early 2009 just before this litigation began. He also said that he grows potatoes on another piece of land for sale at his grocery store.

11. David Youmans, RLS, was qualified an expert without objection. Mr. Youmans was hired by the Defendant to prepare a survey of his property. He relied on unrecorded plats prepared by Pennington that had been prepared for Howard Chaplin in 1998. He described and marked the differences between his plat, Mr. Gasque's plat and an unrecorded plat prepared by James G. Pennington dated June 15, 1998, as shown on **Defendant's Exhibits 5, 6 and 9**.

12. On cross examination Mr. Youmans stated that in his professional opinion Lot 1, Ed Capers Plantation is the southern lot shown on his surveys; that being the lot shown on the left, and that Lot 2 is on the right, to the north of Lot 1. He conceded that he positioned the boundary line between the two lots where he did because it was, in his opinion, the "equitable" thing to do. He conceded that he did not use recognized principles of surveying to make this determination.

13. The Defendant's next witness was Maria Earnestine, title abstractor. Through her the Defendant entered into evidence documents concerning other lots in Ed Capers Plantation, one of them being a deed dated February 12, 1918, **Defendant's Exhibit 13**. She testified that the two acres conveyed in this deed was a part of Lot 5 Ed Capers Plantation which was also owned by Benjamin Days. The grantors in the conveyance are recited as "the Heirs of the Estate of Ben Deas that is to say Sam Deas, Nancy Johnson, John Deas, Celia Smith and Mary Deas".



THE PLAINTIFF'S REBUTTAL

14. David Gasque was recalled to the stand. He testified that he was aware of the Pennington plat that Mr. Youmans placed some reliance on in preparing his survey. Mr. Gasque testified that Mr. Chaplin had approached him to prepare a plat for him based on the Pennington plat that showed he owned 16 acres after he had done the survey for the Plaintiff. **Plaintiff's Exhibit 8.** Mr. Gasque informed Mr. Chaplin that, in his opinion, the Pennington survey was incorrect and he did not do the survey for Mr. Chaplin. Mr. Gasque testified that he believes the work Mr. Pennington did misled Mr. Chaplin.

15. The Plaintiff's father, James D. Smith, returned to the stand. He testified that he did not know of any other heirs of Benjamin Days other than Samuel or recognize the names in **Defendant's Exhibit 13.** (During the questioning it appeared that the first of the heirs' names in the deed may have been "Tom" and Mr. Smith did not know a Tom Deas.)

16. The Plaintiff also returned to the stand and stated she did not know the people named in **Defendant's Exhibit 13.**

CONCLUSIONS OF LAW

17. I find that the property that is the subject of this litigation is situate in Beaufort County, South Carolina and this Court therefore has jurisdiction to hear the matters raised in this case.

18. The Defendant moved for a directed verdict on the grounds that the Plaintiff's father did not prove that he was the adopted son of Samuel and Anna Daise. The Plaintiff argued that the Defendant lacks standing to challenge whether or not Mr. Smith was adopted. I find as follows on the issue of Standing:

STANDING

"To have standing, one must have a personal stake in the subject matter of the lawsuit, i.e. one must be a real party in interest.' Glaze v. Grooms, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996); Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996). 'A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.' Anchor Point Inc.

4

v. Shoals Sewer Co., 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992).”

In this suit, Mr. Chaplin challenged the Plaintiff's title to her property on the claims of Adverse Possession and Adverse Possession under color of title. Neither in his pleadings nor in his testimony did Mr. Chaplin make any claim to have an interest in the Plaintiff's property under any other theory. He does not claim to be an heir of anyone named or identified in the Plaintiff's Complaint to quiet the title to Lot 2, Ed Capers Plantation.

In a claim of title by adverse possession, the identity of the true owner is only of consequence to divest the true owner of title at the time adverse possession is proved. Consequently, the Chaplins have nothing more than a technical interest in the adoption question. The heirs of Benjamin Days are the only parties that would have standing to challenge Mr. Smith's adoptive status because it would affect the percentage of their ownership interests in the property. This does not apply to the Chaplins for if they prove adverse possession Mr. Smith is, regardless of his adoptive status, divested of any interest he may have had in the property, as would the Plaintiff. If Mr. Chaplin cannot prove adverse possession he has no legal interest in title to the property whatsoever. Therefore, I conclude that Mr. Chaplin does not have standing to challenge Mr. Smith's adoptive status because it is irrelevant to his claim to the property by adverse possession.

DEFENSES AND COUNTERCLAIMS

19. The Defendants Howard and Harriet Chaplin have raised three defenses, Stale Demand, Laches and Waiver, and two Counterclaims, Adverse Possession and Adverse Possession under Color of Title. I conclude as follows:

Stale Demand

A stale demand is “one that has for a long time remained unasserted; one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied.” All Saints Parish v. Protestant Epis. Church, 358 SC 209, 595 S.E.2d 253 (Ct. App. 2004) *citing* Pendarvis, 227 S.C. at 59, 86 S.E.2d at 744 (*quoting* Bell v. Mackey, 191 S.C. 105, 123, 3 S.E.2d 816, 824 (1939); Further, the Court of Appeals

remarked in Bell v. Mackey, that there are three elements which must be satisfied to prove staleness of demand (a) lapse of time; (b) inaction and negligence, and (c) opportunity to have proceeded sooner, have been successfully established as to the party's interests. Bell v. Mackey, 191 S.C. 105, 3 S.E.2d 816 (1939).

The very nature of a quiet title action involves a question that for a long time remains unasserted, that being the identity of the living owners of the property being quieted. The Defendants have not set forth any facts to prove the elements necessary to establish that the Plaintiff's quiet title action is a stale demand.

Laches and Waiver

The equitable doctrine of Laches is the equivalent of Waiver which is the "voluntary and intentional relinquishment or abandonment of a known right." Parker v. Parker, 313 S.C. 482 (1994). Laches and Waiver require a party to have known of a right, and know she was abandoning that right. Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007). The Defendants have not set forth any facts to show that the Plaintiff voluntarily and intentionally relinquished or abandoned any known right.

Adverse Possession

The Plaintiff brought this action to quiet the title to property for which she has a deed. The presumption is that she has possession of the property unless the Defendants, the Chaplins in this case, have occupied, held and possessed the property adversely to the Plaintiff's legal title for ten years before the commencement of this action. See. §15-67-210, S.C. Code of Laws. When the claim by adverse possession is not founded on a written instrument, the land shall be deemed to be possessed only when it has been protected by a substantial enclosure; and when it has been usually cultivated or improved. §15-67-250, S.C. Code of Laws. In order to constitute adverse possession, the Chaplin's possession must be actual, open, notorious, hostile, continuous and exclusive for the whole statutory period. Mullin v. Winchester, 237 S.C. 487, 118 S.E.2d 1 (1961).

The evidence presented by the Defendants does not meet the legal requirements for acquiring title by adverse possession. Mr. Chaplin was the only witness presented by the defense regarding his occupation or possession of the property. He testified that he purchased the

property in 1997; he claims he planted potatoes for a couple of years and, at best, he was vague about the times that he used the property at all. He conceded on cross examination that he began clearing one acre of property in late 2008 or early 2009, just before this litigation ensued. Mr. Chaplin has not established the necessary element of continuous occupation by his own testimony.

Mr. Chaplin indicated that he walked the land before he purchased it. He believed he owned the property in question by deed, therefore he has not met the hostile and notorious elements required to establish adverse possession.

Mr. Chaplin did not protect the property by a substantial enclosure, nor did he make any improvements to the property so as to indicate to the whole world that he was claiming the property adversely to the true owner. The Defendants Howard and Harriett Chaplin have not proved they are the owners of Lot 2 by adverse possession.

Adverse Possession under Color of Title

For the purposes of constituting an adverse possession founded upon a written instrument, in this case being the deed by which the Chaplins acquired title to Lot 1, the land shall be deemed to have been possessed and occupied 1) When it has been usually cultivated or improved; 2) When it has been protected by a substantial enclosure; 3) When, although not enclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry or for the ordinary use of the occupant; and 4) When a known farm or single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated. See §15-67-230 S.C. Code of Laws. This is the section of the Code commonly referred to as claiming adversely under "color of title".

Mr. Chaplin testified that he lives on Storyteller Rd. Mr. Chaplin never claimed to have improved or enclosed Lot 1, the lot that was deeded to him. The aerials entered into evidence show that Lot 1, the lot deeded to the Chaplins, has not been improved. For Mr. Chaplin to prevail on a claim of adverse possession under color of title for Lot 2, he must first prove all the elements in §15-67-230. Mr. Chaplin's testimony was devoid of any proof that he occupied, much less improved Lot 1 such that he can prevail in the claim of adverse possession under color

of title for the adjoining Lot 2. The Defendants Howard and Harriett Chaplin have not proved they are the owners of Lot 2 by adverse possession under color of title.

THE PLAINTIFF'S QUIET TITLE ACTION

Having shown that the Defendants Howard and Harriet Chaplin have not successfully rebutted the presumption that the Plaintiff, Lucille Patricia Smith, is the owner of Lot 2, Ed Capers Plantation, the Defendants have no further interest in the outcome of this case other than a boundary dispute between Lot 1 and Lot 2.

The Boundary Dispute

The resolution of this boundary dispute rests in the testimony of the two surveyors who testified in this case. The Plaintiff's expert witness, David Gasque, outlined the method he used in determining the boundaries of Lot 2. The Defendant's expert, David Youmans, outlined his methods for determining the boundaries for Lot 1. Both used the Christensen plat of record for Lots 3 and 4 and the known boundaries for the Sander's farm as reference points. The only dispute is the placement of the boundary between Lot 1 and Lot 2.

Mr. Youmans testified that he placed the boundary line between Lot 1 and Lot 2 where he did on his survey because, in his opinion, it was where it was fair and equitable. Mr. Youmans conceded on cross examination that his decision was not based upon recognized and customary standards in the surveying industry. He also stated he did not consider the tax maps at all in preparing his survey.

Although not normally done, David Gasque chose to rely on the Beaufort County tax assessor's maps to determine the boundary line between Lot 1 and Lot 2. He testified that tax maps show that Ed Capers Plantation had to have been subdivided into lots at some point in time. If there was a subdivision plat, it no longer exists. Mr. Gasque's theory is that the tax maps must have been based on some survey so his rendition of the boundary between Lot 1 and Lot 2 reflects the configuration of the tax maps. The tax maps entered into evidence in the Affidavit of Donna Reardon date back to the 1954 Hunnicutt map and show a lot line consistent with that on the Gasque plat, Plaintiff's Exhibit 2. Mr. Gasque's decision to show the boundary line where it is on his plat was well thought out and was based upon recognized and accepted principles of

surveying.

Quiet Title to Lot 2

The record shows that all known defendants were personally served and those unknown heirs, being unknown to the Plaintiff and her father, were properly served by publication. The other adjoining landowner, Bernice D. Deas for the heirs of W.H. Deas, filed her Affidavit/Answer essentially admitting the allegations in the Complaint and that she has no boundary dispute with the Plaintiff. No one else (other than the Chaplins) filed an Answer or other responsive pleading and a default judgment has been entered. Thus, having dealt with the adverse possession claims of the Chaplins, this is an uncontested quiet title action.

For the reasons stated above, the Defendants Howard and Harriett Chaplin have no standing to challenge the Plaintiff's family history; however I will address the contents of a deed that was entered into evidence, **Defendant's Exhibit 13**, that appears to identify the Heirs of "Ben Deas". It was determined by both the Plaintiff's and the Defendant's title abstractors that Benjamin Days was, at one time, the owner of Lot 5, Ed Capers Plantation. The deed conveys a portion of Lot 5 so presumably "Ben Deas" is one and the same person as "Benjamin Days". The deed states that the Heirs of Ben Deas are Sam Deas, Nancy Johnson, John Deas, Celia Smith and Mary Deas. These are presumably all of his children.

The Plaintiff's father testified in the case in chief that he did not know of any other heirs of Benjamin Days other than Samuel. It is logical to conclude that "Sam Deas" is one and the same as Samuel Daise. Mr. Smith testified on rebuttal that he did not recognize the other names in the deed. The Plaintiff also testified that she did not recognize the names. Consequently these people were unknown heirs at the time this action was instituted and were properly served by publication.

The Plaintiff's father, James Smith, testified that the heirs of Samuel (a/k/a Sam) were Manny Daise, Marie Daise and Georgie Daise. He testified that they are all deceased and did not have spouses or children that survived them. He also testified that Samuel was his mother's uncle. The birth certificate entered into evidence as **Defendant's Exhibit 2**, shows his natural mother's name was Adel Smith. It is logical to conclude that Adel Smith was the daughter of Celia Smith, identified in **Defendant's Exhibit 13** as an heir of Ben Deas, thus substantiating that Samuel was indeed Mr. Smith's mother's uncle. This would make James Smith the only

N

living heir at law of Samuel Daise regardless of Mr. Smith's belief that he was adopted.

"In some cases adoption is defined as the taking into one's family of the child of another as son or daughter and heir, and conferring on it a title to the rights and privileges of such, or as the taking of the child of another into one's family and treating it as one's own." 2 Am Jur 2d, Jurisprudence Publishers, 1962.

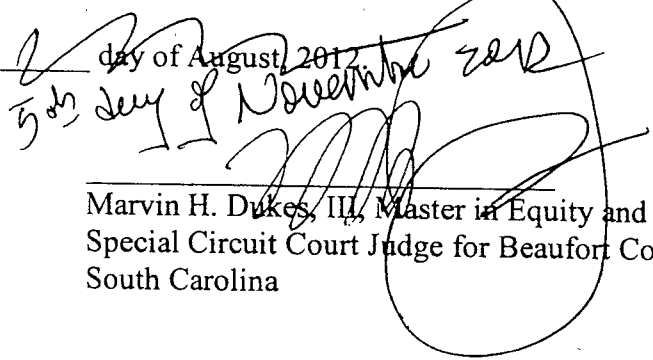
Based on all the facts presented in this case, Mr. Smith had been in possession of Lot 2 since the death of Anna Daise who died in 1949. See the Affidavit of James D. Smith, **Defendant's Exhibit 1**. This means that Mr. Smith was in possession of Lot 2 for over forty (40) years before conveying title to his daughter, the Plaintiff Lucille Patricia Smith, in 1999. The Plaintiff knew of no other heirs of Benjamin Days when she brought this action and all unknown heirs of Benjamin Days were properly served by publication, inclusive of those named in **Defendant's Exhibit 13**. Furthermore, their failure to make a claim to the property for more than twenty (20) years while Mr. Smith was in possession raises the presumption of a grant and the presumption that they have been ousted. See Woods v. Bivens, 292 S.C. 76, 354 S.E.2d 909 (S.C. 1987). Therefore, title to Lot 2, Ed Capers Plantation will be quieted and confirmed in the Plaintiff, Lucille Patricia Smith. Now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following property is quieted and confirmed into Plaintiff, Lucille Patricia Smith, and that she is vested with fee simple title, free and clear of the claims of all others, to the following described real property:

All that certain piece, parcel or tract of land situate, lying and being on St. Helena Island, Beaufort County, South Carolina, known as Lot 2, Ed Capers Plantation, consisting of Eight (8) acres, more or less, all of which is more particularly described as to metes and bounds, courses and distances on that certain plat prepared by David E. Gasque, RLS dated January 23, 2009.

Tax Map # R300-021-000-0018-0000

DONE AND ORDERED this 2 day of August, 2012

5th day of November 2012

Marvin H. Dukes, III, Master in Equity and
Special Circuit Court Judge for Beaufort County,
South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07-02608

Lucille Patricia Smith

The Heirs at Law of Benjamin Days, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069

Judge Code

11/5/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on the 5th day of Nov, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 14th day of Nov, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
John. Blum - STAFF
CLERK OF COURT

Court Reporter: N/A

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

LUCILLE PATRICIA SMITH)

Plaintiff,)

vs.)

THE HEIRS AT LAW OF BENJAMIN)

DAYS a/k/a, BEN DEAS a/k/a DAISE)

THE HEIRS AT LAW OF SAMUEL)

DAISE, THE HEIRS AT LAW OF ANNA)

DAISE, THE HEIRS AT LAW OF)

MANNY DAISE, THE HEIRS AT LAW)

OF GEORGIE DAISE, THE HEIRS AT)

LAW OF MARIE DAISE MIDDLETON,)

THE HEIRS AT LAW OF ROSE)

MIDDLETON, THE HEIRS AT LAW OF)

CHARLIE MIDDLETON, THE HEIRS)

AT LAW OF W.H. DEAS, HOWARD)

CHAPLIN, HARRIET CHAPLIN, and all)

other persons unknown, having or claiming)

any rights, title or interest in or lien upon the)

real property described in the Complaint)

herein, being designated collectively as)

JOHN DOE or SARAH ROE, including all)

minors, persons in the Armed Forces, and)

insane persons and all other persons under)

any other disability who might have or claim)

to have any right, title, estate or interest in)

or lien upon the real property described in)

the Complaint herein,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-2608

Non-Jury

ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

2009 JUN -2 AM 11:51

COMPLAINT

The Plaintiff, pursuant to South Carolina Section Code 15-67-10 *et seq* and Section 15-67-210 *et seq*, bring this cause of action against the Defendants, The Heirs at Law of Benjamin

Days a/k/a Ben Deas a/k/a Daise, *et al*, to quiet title to real property and as grounds wherefore states:

1. That the real property which is the subject of this action is situated in the County of Beaufort, State of South Carolina, and that, therefore, this Honorable Court has jurisdiction over all matters hereinafter alleged.

2. That the Defendants, John Doe and Sarah Roe, are fictitious names used to represent and designate any living heirs, devisees or successors of the Defendants and any other interested parties who are proper Defendants, if any, but whose names are unknown to the Plaintiff, including any persons or successors who claim to have right, title, estate or interest in or lien upon the real estate herein described.

3. The property mentioned and referred to in this Complaint and which forms the basis for this cause of action (hereinafter "the Property") is more specifically described as follows:

All that certain piece, parcel or tract of land situate, lying and being on St. Helena Island, Beaufort County, South Carolina, known as Lot 2, consisting of Eight (8) acres, more or less, all of which is more particularly described as to metes and bounds, courses and distances on that certain plat prepared by David E. Gasque, RLS dated January 23, 2009, a copy of which is attached hereto as Exhibit A.
Tax Map # R300-021-000-0018-0000

4. That Benjamin Days (who was also known as Ben Deas and Ben Daise) acquired title to the Property by deed of Daniel F. Appleton dated January 14, 1892 which is recorded at the Office of the Register of Deeds for Beaufort County in Book 22 at page 80.

5. That Benjamin Days a/k/a Ben Deas a/k/a Ben Daise died intestate seized and possessed of the Property survived only by one son, Samuel Daise.

6. Samuel Daise died intestate in or about 1942 seized and possessed of the Property, which was his lifelong residence, survived by a wife, Anna Daise, and four children; Manny Daise, Georgie Daise, Marie Daise Middleton and James Daise a/k/a James D. Smith, his adopted son.

7. Anna Daise died intestate in or about 1949 survived by her four children, Manny Daise, Georgie Daise, Marie Daise Middleton and James Daise a/k/a James D. Smith as aforesaid; and Manny Daise and Georgie Daise both died intestate sometime prior to 1964 without having married and without issue; and survived by their two siblings Marie Daise Middleton and James Daise a/k/a James D. Smith.

8. Marie Daise Middleton died intestate in or about 1985, predeceased by her husband and predeceased by her two children: Rose Middleton and Charlie Middleton who both died prior to 1964 without having married and without issue.

9. James D. Smith (a/k/a James Daise), being the sole surviving heir of Benjamin Days a/k/a Ben Deas a/k/a Daise, conveyed the Property to his daughter Lucille P. Smith (the Plaintiff herein) by deed dated December 3, 1999 and recorded at the Office of the Register of Deeds for Beaufort County in Book 1238 at Page 1793.

10. The following persons are shown by the Beaufort County Register of Deeds as contiguous or adjoining boundary owners and if such persons claim any right, title, estate or interest in the property described in Paragraph 3 of this Complaint, or if they have a boundary dispute with said property, they must make their claims known in this action and file a written Answer to this Complaint or be forever barred:

a. The heirs of W.H. Deas c/o Bernice D. Davis as owners of R300-021-000-0017-0000;

b. Howard Chaplin and Harriet Chaplin as owners of R300-021-000-0020-0000;

11. That Benjamin Days a/k/a Ben Deas a/k/a Daise and his heirs and assigns as aforesaid, have been in exclusive and continuous possession of the Property since 1892 when Benjamin Days acquired title to said Property by deed of Daniel F. Appleton; however, by all information and belief a cloud exists upon the title to said property in that Benjamin Days a/k/a Ben Daise, Samuel Daise, Anna Daise, Manny Daise, Georgie Daise and Marie Daise Middleton died intestate, and there were no estate or administrative proceedings on behalf of any of them.

12. That the Plaintiff knows of no other remedy in law or in equity by which the clouds of the title may be removed other than by bringing the present action.

WHEREFORE, The Plaintiff prays as follows:

A. That the Court inquire into the matters set forth and determine the rights of the parties herein;

B. That this Court issue an Order quieting and confirming title to the property described in Paragraph three (3) to the Plaintiff, and forever barring all others from any claim, right, title, estate, lien or any other interest in or to subject property.

C. For costs and attorneys fees and such other and further relief as this Court deems just and proper.



Alysoun M. Eversole
1509 King Street
Beaufort, SC 29901
Phone: (843)379-3333
Facsimile: (843)379-5558

Beaufort, South Carolina
29th day of May 2009.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO.: 2009-CP-07- 2608

LUCILLE PATRICIA SMITH)

Non-Jury

Plaintiff,)

vs.)

THE HEIRS AT LAW OF BENJAMIN)

DAYS a/k/a, BEN DEAS a/k/a DAISE)

THE HEIRS AT LAW OF SAMUEL)

DAISE, THE HEIRS AT LAW OF ANNA)

DAISE, THE HEIRS AT LAW OF)

MANNY DAISE, THE HEIRS AT LAW)

OF GEORGIE DAISE, THE HEIRS AT)

LAW OF MARIE DAISE MIDDLETON,)

THE HEIRS AT LAW OF ROSE)

MIDDLETON, THE HEIRS AT LAW OF)

CHARLIE MIDDLETON, THE HEIRS)

AT LAW OF W.H. DEAS, HOWARD)

CHAPLIN, HARRIET CHAPLIN, and all)

other persons unknown, having or claiming)

any rights, title or interest in or lien upon the)

real property described in the Complaint)

herein, being designated collectively as)

JOHN DOE or SARAH ROE, including all)

minors, persons in the Armed Forces, and)

insane persons and all other persons under)

any other disability who might have or claim)

to have any right, title, estate or interest in)

or lien upon the real property described in)

the Complaint herein,)

Defendants.)

**AFFIDAVIT OF
JAMES D. SMITH**

PERSONALLY APPEARED, before me, James D. Smith, who being duly sworn,
deposes and says:

"My name is James Daise Smith. I have also been known as James Daise and James D. Smith. I am 73 years old. My current residence is located at 27 David Green Road, St. Helena Island, South Carolina."

"I am the adopted son and sole surviving heir of Samuel and Anna Daise. Samuel Daise was the son of Benjamin Days, who was also known as Ben Daise and Ben Deas. I do not know

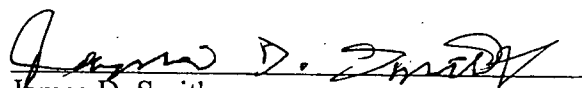
the date of the death of Benjamin Days, but he died survived by one son, Samuel Daise. Samuel Daise died about 1942 survived by his wife, Anna Daise and four children: Manny Daise, Georgie Daise, Marie Daise and I. Anna died about 1949 survived by the four of us children. Manny and Georgie moved to Philadelphia and both died sometime before 1964 without having married and without having any children. Marie Daise married and became known as Marie Daise Middleton. She moved to Savannah and had two children, Rose and Charlie, who both died prior to 1964 without having married and without having any children. Marie died in a state nursing home in Columbia, SC in 1985 predeceased by her husband."

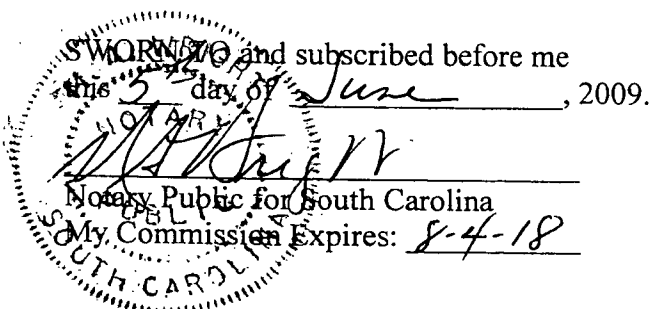
"I was born on the property that is the subject of this quiet title action and shown on the plat attached to the Complaint, which I will refer to as 'the Property'. My mother was Adelle Smith who lived in Samuel and Anna's house on the Property at the time I was born. To the best of my recollection and what I was told, my mother later married a fellow by the name of Green and left permanently. I was adopted and raised by Samuel and Anna Daise. In 1964 I built the home I presently live in which is located less than one-half mile down the same dirt road as the Property."

"Marie use to live on the Property until about 1970 when she and her husband built another home on her husband's property. No one has lived on the Property since then. For many years I continued to grow corn, sweet potatoes, beans, okra and watermelon on it. I paid the taxes on the property with Marie until the mid 1970's. We both went to the courthouse and had her name removed from the tax rolls, had my name added and the tax bills sent to me. I have paid the taxes ever since."

"I go to or pass by the Property almost every day. I have personal knowledge that, other than my planting vegetables, nothing was being done to the Property after my sister left. The house deteriorated and I, with the help of Robert Lee Johnson, tore it down so I would no longer have to pay the taxes on it. The shrubs and trees grew naturally on the Property. In December 1999 I went to an attorney and signed a deed conveying legal title to the Property to my daughter, Lucille Patricia Smith. About five years ago Howard Chaplin, who grew up with me in the neighborhood, came to me and asked permission to plant sweet potatoes on a part of the Property. I gave him permission but he did not clear the land or plant the potatoes."

"At the beginning of this year, 2009, Howard Chaplin bush hogged a part of the Property about the size of a garden plot. I went to him and asked what he was doing. He claimed he bought our Property from Joe Cuthbert which is what started the need for this quiet title action."


James D. Smith



COPY

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-07-2608

NOV 20 AM 9:14
JERRI L. FLETCHER
CLERK OF COURT
BEAUFORT COUNTY, S.C.

LUCILLE PATRICIA SMITH,
Plaintiff,

vs.

THE HEIRS AT LAW OF BENJAMIN DAYS
a/k/a BEN DEAS a/k/a DAISE, THE HEIRS
AT LAW OF SAMUEL DAISE, THE HEIRS
AT LAW OF ANNA DAISE, THE HEIRS AT
LAW OF MANNY DAISE, THE HEIRS AT
LAW OF GEORGE DAISE, THE HEIRS AT
OF MARIE DAISE MIDDLETON, THE HEIRS
AT LAW OF ROSE MIDDLETON, THE HEIRS
AT LAW OF CHARLIE MIDDLETON, THE
HEIRS AT LAW OF W.H. DEAS, HOWARD
CHAPLIN, HARRIET CHAPLIN, and all other
persons unknown, having or claiming any
rights, title or interest in or lien upon the
real property described in the Complaint
herein, being designated collectively as
JOHN DOE or SARAH ROE, including all
minors, persons in the Armed Forces, and
insane persons and all other persons under
any other disability who might have or claim
to have any right, title, estate or interest in
or lien upon the real property described in
the Complaint herein,

Defendants.

ANSWER
AND
COUNTERCLAIMS

TO THE PLAINTIFF:
c/o Alysoun M. Eversole,
Attorney At Law

Howard Chaplin, Jr. and Harriet Chaplin Answer the Complaint dated May 29,
2009 in the following manner, to wit:

Jgm

FOR A FIRST DEFENSE
(General Denial)

101. All allegations of the Complaint are specifically denied unless specifically admitted herein.

102. Paragraph 1 of the Complaint is admitted.

103. Paragraphs 2 and 12 of the Complaint require no response.

104. The allegations of Paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Complaint are denied.

FOR A SECOND DEFENSE
(Stale Demand)

201. Howard Chaplin, Jr. and Harreitt Chaplin (herein the CHAPLINS) acquired title to a lot in what is known as the Ed Capers or Appleton Subdivision on St. Helena Island in Deed Book 1004 at Page 2385 recorded on January 9, 1998 and had their parcel of land surveyed on January 15, 1998 by James G. Pennington, SCRLS.

202. Due to the lack of a prior recorded or unrecorded survey to state the exact location and boundaries of the lots in the Ed Capers or Appleton Subdivision (specifically neither Lots 1 nor 2 had previously been surveyed) the surveyor for the CHAPLINS surveyed the wrong lot in 1998.

203. Due to their receiving a survey of the wrong lot in 1998, the CHAPLINS entered into the sole and continued use and occupation of the wrong lot which parcel of land is approximately the lot or parcel of land claimed by the Plaintiff.

204. The sole and continued use of the parcel of real property by the CHAPLINS from 1998 through the present time, a time period of more than eleven years, has been without any claim or notice of a claim by the Plaintiff during that time period.

205. Any claim or assertion of ownership by the Plaintiff of the parcel of land which has been solely and continuously used and occupied by the CHAPLINS at this late date is barred by (a) the unexplained and unreasonable lapse of time, (b) the death of witnesses, (c) the loss, destruction or misplacement of documents, (d) the impairment of memory and the inability of parties and witnesses to recollect events that have been dimmed by time, and, (e) the inaction, inattention and negligence of the Plaintiff in bringing forth any claims in a prompt manner.



206. The failure of the Plaintiff to assert any claim for more than eleven years in the face of the manifest use and occupation of the land by the CHAPLINS constitutes a stale demand by the Plaintiff.

FOR A THIRD DEFENSE
(Waiver)

301. Howard Chaplin, Jr. and Harreitt Chaplin (herein the CHAPLINS) acquired title to a lot in what is known as the Ed Capers or Appleton Subdivision on St. Helena Island in Deed Book 1004 at Page 2385 recorded on January 9, 1998 and had their parcel of land surveyed on January 15, 1998 by James G. Pennington, SCRLS.

302. Due to the lack of a prior recorded or unrecorded survey to state the exact location and boundaries of the lots in the Ed Capers or Appleton Subdivision (specifically neither Lots 1 nor 2 had previously been surveyed) the surveyor for the CHAPLINS surveyed the wrong lot in 1998.

303. Due to their receiving a survey of the wrong lot in 1998, the CHAPLINS entered into the sole and continued use and occupation of the wrong lot which parcel of land is approximately the lot or parcel of land claimed by the Plaintiff.

304. The sole and continued use of the parcel of real property by the CHAPLINS from 1998 through the present time, a time period of more than eleven years, has been without any claim or notice of a claim by the Plaintiff during that time period.

305. The failure of the Plaintiff to act to assert any claim for the past eleven years on the real property that she claims in the face of the manifest use and occupation by the CHAPLINS constitutes a waiver by the Plaintiff of any rights to the same that she may claim at this late date.

FOR A FOURTH DEFENSE
(Laches)

401. Howard Chaplin, Jr. and Harreitt Chaplin (herein the CHAPLINS) acquired title to a lot in what is known as the Ed Capers or Appleton Subdivision on St. Helena Island in Deed Book 1004 at Page 2385 recorded on January 9, 1998 and had their parcel of land surveyed on January 15, 1998 by James G. Pennington, SCRLS.

402. Due to the lack of a prior recorded or unrecorded survey to state the

exact location and boundaries of the lots in the Ed Capers or Appleton Subdivision (specifically neither Lots 1 nor 2 had previously been surveyed) the surveyor for the CHAPLINS surveyed the wrong lot in 1998.

403. Due to their receiving a survey of the wrong lot in 1998, the CHAPLINS entered into the sole and continued use and occupation of the wrong lot which parcel of land is approximately the lot or parcel of land claimed by the Plaintiff.

404. The sole and continued use of the parcel of real property by the CHAPLINS from 1998 through the present time, a time period of more than eleven years, has been without any claim or notice of a claim by the Plaintiff during that time period.

405. The Plaintiff has delayed more than eleven years in the face of open use and occupation of the land by the CHAPLINS before making any claim against the CHAPLINS and such unexplained time period in stepping forward to assert a claim denotes an undue lapse of time, negligence in asserting a claim of any alleged rights, and the unexplained opportunity and promptness to have acted sooner.

406. The untimely delayed actions of the Plaintiff as set forth above constitutes laches by her and bars any recovery by her.

**FOR A FIRST COUNTERCLAIM
(Adverse Possession)**

1. The deed to the CHAPLINS in Record Book 1004 at Page 2385 is dated April 16, 1997 and was recorded January 9, 1998 and both of these events were more than eleven years prior to the filing of this action on June 2, 2009.

2. During the time period from April 1997 the CHAPLINS have used the parcel of real property described on a plat prepared by James G. Pennington, SCRLS, on January 15, 1998 continuously, hostilely, openly, adversely, notoriously, and exclusively until the Plaintiff first appeared on the scene shortly prior to the institution of this suit, i.e., more than eleven years elapsed.

3. Section 15-67-210, S.C. Code of Laws, 1976, as amended, provides that any person in possession and occupation of a parcel of land for a period of ten years shall be deemed to have been in possession with legal title to the land so that any claim at this late date of over eleven years by the Plaintiff is barred by this statute.

4. The CHAPLINS have met the requirements of Code Section 15-67-210 and they are the legal fee simple owners of the land described on the plat referred to above by James G. Pennington, SCRLS.



FOR A SECOND COUNTERCLAIM
(Adverse Possession Under Color Of Title)

1. The deed to the CHAPLINS in Record Book 1004 at Page 2385 is dated April 16, 1997 and was recorded January 9, 1998 and both of these events were more than eleven years prior to the filing of this action on June 2, 2009.

2. During the time period from April 1997 the CHAPLINS have used the parcel of real property described on a plat prepared by James G. Pennington, SCRLS, on January 15, 1998 continuously, hostily, openly, adversely, notoriously, and exclusively until the Plaintiff first appeared on the scene shortly prior to the institution of this suit, i.e., more than eleven years elapsed.

3. Section 15-67-220, S.C. Code of Laws, 1976, as amended provides that one who occupies a parcel of land under a claim of title by a written instrument for ten years shall be deemed to have held the land adversely to the true owner so that any claim by the Plaintiff at this late date of over eleven years is barred by this statute.

4. The CHAPLINS have met the requirements of Code Section 15-67-220 and they are the legal fee simple owners of the land described on the plat referred to above by James G. Pennington, SCRLS.

PRAYER

WHEREFORE, Howard Chaplin, Jr. and Harriet Chaplin pray the Court to inquire into the facts and matters alleged herein and to grant the following relief, to wit:

- A. To dismiss the Complaint with prejudice and costs assessed against the Plaintiff due to the (1) state demand of the Plaintiff, (2) the waiver of rights by the Plaintiff, and, (3) the laches in the exercise of rights by the Plaintiff; and,
- B. To grant the remedies of adverse possession to these Defendants as set forth in the First and Second Counterclaims; and,

C. For such other and further relief as the Court shall deem just and proper.

Mikell, Weidner, Wegmann & Harper, LLC

November 19, 2009

By: 
J. Thomas Mikell
Attorneys for Howard Chaplin, Jr.
and Harriet Chaplin

Post Office Box 1727
Beaufort, South Carolina 29901
Phone: 843-524-2110
Fax: 843-524-4995

JTM File No. 4740.0000



COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO.: 2009-CP-07-2608

LUCILLE PATRICIA SMITH)

Non-Jury

Plaintiff,)

vs.)

THE HEIRS AT LAW OF BENJAMIN)
DAYS a/k/a, BEN DEAS a/k/a DAISE)
THE HEIRS AT LAW OF SAMUEL)
DAISE, THE HEIRS AT LAW OF ANNA)
DAISE, THE HEIRS AT LAW OF)
MANNY DAISE, THE HEIRS AT LAW)
OF GEORGIE DAISE, THE HEIRS AT)
LAW OF MARIE DAISE MIDDLETON,)
THE HEIRS AT LAW OF ROSE)
MIDDLETON, THE HEIRS AT LAW OF)
CHARLIE MIDDLETON, THE HEIRS)
AT LAW OF W.H. DEAS, HOWARD)
CHAPLIN, HARRIET CHAPLIN, and all)
other persons unknown, having or claiming)
any rights, title or interest in or lien upon the)
real property described in the Complaint)
herein, being designated collectively as)
JOHN DOE or SARAH ROE, including all)
minors, persons in the Armed Forces, and)
insane persons and all other persons under)
any other disability who might have or claim)
to have any right, title, estate or interest in)
or lien upon the real property described in)
the Complaint herein,)

Defendants.)

09 DEC 21 AM 10:32
CLERK OF COURT

REPLY

The Plaintiff, Lucille Patricia Smith, replies to the Affirmative Defenses and Counterclaims of the Defendants Howard Chaplin Jr. and Harriet Chaplin as follows:

1. All allegations contained in the "Answer and Counterclaims" not specifically admitted are denied.

2. Paragraphs 101, 102, 103 and 104 are answers to the Plaintiff's Complaint and do not require a reply.

As to the Affirmative Defenses:

3. Paragraph 201 of the "Answer and Counterclaims" is admitted to the extent that Howard Chaplin, Jr. and Harriet Chaplin are the grantees in a deed recorded in Deed Book 1004 at Page 2385; Plaintiff is without sufficient information to form a belief about the remaining allegations contained in paragraph 201 and as such the allegations are denied.

4. Paragraphs 202, 203, 204, 205 and 206 are denied.

5. Paragraph 301 of the "Answer and Counterclaims" is admitted to the extent that Howard Chaplin, Jr. and Harriet Chaplin are the grantees in a deed recorded in Deed Book 1004 at Page 2385; Plaintiff is without sufficient information to form a belief about the remaining allegations contained in paragraph 301 and as such the allegations are denied.

6. Paragraphs 302, 303, 304 and 305 are denied.

7. Paragraph 401 of the "Answer and Counterclaims" is admitted to the extent that Howard Chaplin, Jr. and Harriet Chaplin are the grantees in a deed recorded in Deed Book 1004 at Page 2385; Plaintiff is without sufficient information to form a belief about the remaining allegations contained in paragraph 401 and as such the allegations are denied.

8. Paragraphs 402, 403, 404, 405 and 406 are denied.

As to the First Counterclaim:

9. Paragraph 1 of the First Counterclaim is admitted.

10. Paragraph 2 of the First Counterclaim is denied.

11. Defendant in the Counterclaim, Lucille Patricia Smith, admits the content of Section 15-67-210, S.C. Code of Laws, 1976, as amended, and denies all remaining allegations contained in Paragraph 3 of the First Counterclaim.

12. Paragraph 4 of the First Counterclaim is denied.

As to the Second Counterclaim:

13. Paragraph 1 of the Second Counterclaim is admitted.

14. Paragraph 2 of the Second Counterclaim is denied.

15. Defendant in the Counterclaim, Lucille Patricia Smith, admits the content of Section 15-67-220, S.C. Code of Laws, 1976, as amended, and denies all remaining allegations contained in Paragraph 3 of the Second Counterclaim.

16. Paragraph 4 of the Second Counterclaim is denied.

WHEREFORE, The Plaintiff/Defendant in the Counterclaims, Lucille Patricia Smith, prays as follows:

A. That the Court inquire into the matters set forth in the pleadings and determine the rights of the parties herein;

B. That this Court issue an Order quieting and confirming title to the property described in Paragraph three (3) of the Complaint into the Plaintiff, and forever barring the Defendants and all others from any claim, right, title, estate, lien or any other interest in or to the subject property.

C. That this Court issue an Order dismissing the Affirmative Defenses and Counterclaims of the Defendants Howard Chaplin, Jr. and Harriet Chaplin; and

D. For costs and attorneys fees and such other and further relief as may be provided by law or this Court deems just and proper.

EVERSOLE LAW FIRM, P.C.



Alysoun M. Eversole
1509 King Street
Beaufort, SC 29901
Phone: (843)379-3333
Facsimile: (843)379-5558

Beaufort, South Carolina
18th day of December 2009.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-07-2608

LUCILLE PATRICIA SMITH,)
)
Plaintiff,)
)
vs.)
)
THE HEIRS AT LAW OF BENJAMIN)
DEAS A/K/A DAISE, ET AL)
)
Defendants.)

**SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS
TO THE PLAINTIFF**

TO THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that within thirty (30) days from the date hereof, in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, YOU are requested to produce to the Defendants the DOCUMENTS set forth below:

"YOU" or "YOUR" as used herein shall mean the Plaintiff and all persons acting or purporting to act on behalf of the Plaintiff such as agents and employees and partners.

"DOCUMENTS" shall mean, unless otherwise indicated, all written material of any kind or character in the possession, custody or control of YOU, either sent by or received by YOU, to include but not limited to: (1) letters, (2) correspondence, (3) telegrams, (4) memoranda, (5) notes, (6) records, (7) minutes, (8) contracts, (9) agreements, (10) records or notations of telephone or personal conversations or conferences, (11) inter-office communications, (12) microfilm, (13) bulletins, (14) circulars, (15) pamphlets, (16) photographs, (17) artists' renderings, (18) studies, (19) notices, (20) summaries, (21) reports, (22) books, (23) teletype messages, (24) invoices, (25) financial information, (26) tape recordings, (27) cancelled checks, (28) bank statements, (29) engineering drawings, (30) engineering specifications, (31) architectural plans, (32) work sheets, (33) surveys, (34) FAX messages, (35) e-mails, (36) word-processing documents, (37) voice mail, (38) instant messages, (39) calendars, (40) charts and graphs, (41) scanned images, (42) videos, (43) power point presentations, (44) external hard drives, (45) deleted items, (46) archived e-mail and other data and (47) tape back-ups.

The term DOCUMENTS refers to any of these materials which are in YOUR possession, custody or control or in the possession, custody or control of any present or past employee, agent, partner or representative of YOURS.

With respect to any DOCUMENTS requested herein that YOU withhold from production on the ground of objection or privilege, please set forth in YOUR response an identification of each such DOCUMENT, specifying its author and addressee(s), the persons to whom copies have been furnished, its date, its subject matter, and the basis of YOUR claim of privilege or objection as set forth in Rule 34 SCRPC.

The specific DOCUMENTS (as defined above) that are requested are as follows:

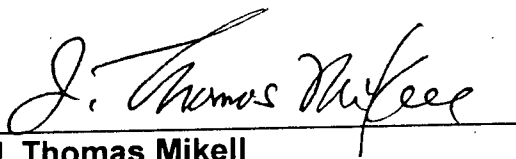
1. Any and all DOCUMENTS which prove the adoption of James Daise a/k/a James D. Smith as alleged in Paragraph 6 of the Complaint.
2. The birth certificate of James Daise a/k/a James D. Smith.
3. The Court Order which confirms the adoption of James Daise a/k/a James D. Smith as alleged in Paragraph 6 of the Complaint.

These requests for production are to be regarded as continuing and YOU are to supplement YOUR responses should additional DOCUMENTS be discovered or obtained by YOU or YOUR counsel prior to trial.

Mikell, Weidner, Wegmann & Harper, LLC

May 27, 2011

By:



J. Thomas Mikell
Attorney for Howard Chaplin and
Harriet Chaplin

Post Office Box 1727
Beaufort, South Carolina 29901
Phone: 843-524-2110
Fax: 843-524-4995

JTM File No. 4740.0000

CONFIDENTIAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2009-CP-07-2608
	)	
LUCILLE PATRICIA SMITH	)	Non-Jury
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE HEIRS AT LAW OF BENJAMIN	)	
DAYS a/k/a, BEN DEAS a/k/a DAISE	)	
THE HEIRS AT LAW OF SAMUEL	)	
DAISE, THE HEIRS AT LAW OF ANNA	)	
DAISE, THE HEIRS AT LAW OF	)	
MANNY DAISE, THE HEIRS AT LAW	)	
OF GEORGIE DAISE, THE HEIRS AT	)	
LAW OF MARIE DAISE MIDDLETON,	)	
THE HEIRS AT LAW OF ROSE	)	
MIDDLETON, THE HEIRS AT LAW OF	)	PLAINTIFF'S RESPONSE TO
CHARLIE MIDDLETON, THE HEIRS	)	DEFENDANTS CHAPLIN'S
AT LAW OF W.H. DEAS, HOWARD	)	REQUEST FOR PRODUCTION
CHAPLIN, HARRIET CHAPLIN, and all	)	OF DOCUMENTS - SECOND
other persons unknown, having or claiming	)	
any rights, title or interest in or lien upon the	)	
real property described in the Complaint	)	
herein, being designated collectively as	)	
JOHN DOE or SARAH ROE, including all	)	
minors, persons in the Armed Forces, and	)	
insane persons and all other persons under	)	
any other disability who might have or claim	)	
to have any right, title, estate or interest in	)	
or lien upon the real property described in	)	
the Complaint herein,	)	
	)	
Defendants.	)	

TO J. THOMAS MIKELL, ATTORNEY FOR DEFENDANTS HOWARD AND
HARRIET CHAPLIN:

The Plaintiff, LUCILLE PATRICIA SMITH, by and through her undersigned counsel, pursuant to Rule 15 of the South Carolina Magistrate Court Rules, hereby Responds to Defendants Chaplin's Second Request for Production of Documents as follows:

1. Any and all documents which prove the adoption of James Daise a/k/a James D. Smith as alleged in Paragraph 6 of the Complaint.

RESPONSE: NONE

Plaintiff reserves the right to supplement this response up to and including the time of trial.

2. The birth certificate of James Daise a/k/a James D. Smith.

RESPONSE: Copy of Birth Certification

Plaintiff reserves the right to supplement this response up to and including the time of trial.

3. The Court Order which confirms the adoption of James Daise a/k/a James D. Smith as alleged in Paragraph 6 of the Complaint.

RESPONSE: NONE

Plaintiff reserves the right to supplement this response up to and including the time of the trial.

Respectfully Submitted,
EVERSOLE LAW FIRM, P.C.



Alysoun M. Eversole
1509 King Street
Beaufort, SC 29902
(843) 379-3333
ATTORNEY FOR THE PLAINTIFF

Beaufort, SC
July 12, 2011

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

BIRTH CERTIFICATION

STATE FILE NUMBER: 139-37-002238

NAME OF REGISTRANT: *JAMES SMITH*

DATE OF BIRTH: FEBRUARY 12, 1937

SEX: MALE

PLACE OF BIRTH: ST. HELENA ISLAND, SOUTH CAROLINA

COUNTY OF BIRTH: BEAUFORT

MOTHER'S MAIDEN NAME: ADLE SMITH

MOTHER'S PLACE OF BIRTH: SOUTH CAROLINA

FATHER'S NAME: NO FATHER LISTED

FATHER'S PLACE OF BIRTH: NOT LISTED

DATE RECORD FILED: FEBRUARY 15, 1937

DATE ISSUED: JULY 08, 2011

SPECIAL INSTRUCTIONS:

NA

SC01717453

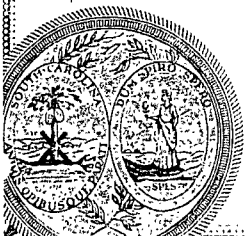
This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

C. Earl Hunter
C. Earl Hunter
Commissioner and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 08/01/2009



41

P1A23

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO.: 2009-CP-07-2608

LUCILLE PATRICIA SMITH)

Non-Jury

Plaintiff,)

vs.)

THE HEIRS AT LAW OF BENJAMIN)

DAYS a/k/a, BEN DEAS a/k/a DAISE)

THE HEIRS AT LAW OF SAMUEL)

DAISE, THE HEIRS AT LAW OF ANNA)

DAISE, THE HEIRS AT LAW OF)

MANNY DAISE, THE HEIRS AT LAW)

OF GEORGIE DAISE, THE HEIRS AT)

LAW OF MARIE DAISE MIDDLETON,)

THE HEIRS AT LAW OF ROSE)

MIDDLETON, THE HEIRS AT LAW OF)

CHARLIE MIDDLETON, THE HEIRS)

AT LAW OF W.H. DEAS, HOWARD)

CHAPLIN, HARRIET CHAPLIN, and all)

other persons unknown, having or claiming)

any rights, title or interest in or lien upon the)

real property described in the Complaint)

herein, being designated collectively as)

JOHN DOE or SARAH ROE, including all)

minors, persons in the Armed Forces, and)

insane persons and all other persons under)

any other disability who might have or claim)

to have any right, title, estate or interest in)

or lien upon the real property described in)

the Complaint herein,)

Defendants.)

AFFIDAVIT OF DEFAULT

11 SEP - 7 PM 4:52
CLERK OF COURT
BEAUFORT COUNTY
S.C.

PERSONALLY APPEARED, before me, Alysoun M. Eversole, who being duly sworn,
deposes and says:

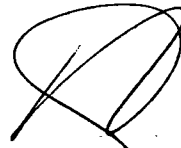
1. I am the attorney for the Plaintiff in this action.
2. This action is brought for the purpose of having the rights of the parties to said action in the property described in the Complaint adjudicated and to forever bar all claims,

rights, titles, interest and estate in and to or liens upon said property, other than those of the Plaintiff.

3. The Summons, Complaint and Lis Pendens have been duly filed in the Office of the Clerk of Court for Beaufort County, South Carolina.

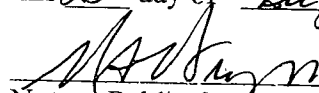
4. The Defendants THE HEIRS AT LAW OF BENJAMIN DAYS a/k/a BEN DEAS a/k/a DAISE, THE HEIRS AT LAW OF SAMUEL DAISE, THE HEIRS AT LAW OF ANNA DAISE, THE HEIRS AT LAW OF MANNY DAISE, THE HEIRS AT LAW OF GEORGIE DAISE, THE HEIRS AT LAW OF MARIE DAISE MIDDLETON, THE HEIRS AT LAW OF ROSE MIDDLETON, THE HEIRS AT LAW OF CHARLIE MIDDLETON, THE HEIRS AT LAW OF W.H. DEAS and all other persons unknown, having or claiming any rights, title or interest in or lien upon the real property described in the Complaint herein, being designated collectively as JOHN DOE and SARAH ROE, including all minors, persons in the Armed Forces, and insane persons and all other persons under any other disability who might have or claim to have any right, title, estate or interest in or lien upon the real property described in the Complaint herein were served by Publication in the Beaufort Gazette for three consecutive weeks beginning March 17, 2011, March 24, 2011 and March 31, 2011, as evidenced by the Affidavit of Sara Johnson Borton, Publisher, previously filed in this action.

5. That said Defendants have failed to Answer or otherwise respond to the Summons and Complaint served upon them, and that more than thirty (30) days have elapsed since the service of the Summons on the foregoing Defendants, without Notice of Appearance, Answer or other responsive pleading filed of record on their behalf.



Alysoun M. Eversole
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29901
ATTORNEY FOR THE PLAINTIFF

SWORN TO and subscribed before me
this 25th day of August, 2011.


Notary Public for South Carolina
My Commission Expires: 8-4-18

MIKELL, WEIDNER, WEGMANN & HARPER, LLC

J. Thomas Mikell *
Larry W. Weidner, II (SC & PA)
James J. Wegmann (SC & TX)
Frampton L. Harper, II

Mailing Address
Post Office Box 1727
Beaufort, South Carolina 29901

From the Desk of:
J. Thomas Mikell
MikellLaw@embarqmail.com
Telephone (843)524-2110
Fax (843)524-4995

Mikell Office
14 Professional Village Circle
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office
6 Professional Village Circle
Beaufort, South Carolina 29907

MEMORANDUM

November 16, 2011

To: Judge Marvin H. Dukes, III
Post Office Box 1228
Beaufort, SC 29901

From: J. Thomas Mikell, Attorney At Law 

Re: Lucille Patricia Smith
vs Howard Chaplin, Jr.
Case No. 2009-CP-07-2608
Our File No. 4740.0000

Attached is a Proposed Decree which contains the issues of law that I remember from the trial. Frankly, it is difficult to remember the testimony and legal issues from the trial of some two and a half months ago without a Transcript of the testimony so this was done from memory and my trial notes.

At this time I have not opened the envelope containing the Brief sent to you by opposing counsel as it came in while I was out of town for several days. Thus, I will turn this Proposed Decree in to you and then review that document and I wish to then comment on it.

JTM:lwj
Attachment

cc: Alysoun M. Eversole, Attorney

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-07-2608

LUCILLE PATRICIA SMITH,)

Plaintiff,)

vs.)

DECREE

THE HEIRS AT LAW OF BENJAMIN DAYS)
a/k/a BEN DEAS a/k/a DAISE, THE HEIRS)
AT LAW OF SAMUEL DAISE, THE HEIRS AT)
LAW OF ANNA DAISE, THE HEIRS AT LAW)
OF MANNY DAISE, THE HEIRS AT LAW OF)
GEORGIE DAISE, THE HEIRS AT LAW OF)
MARIE DAISE MIDDLETON, THE HEIRS AT)
LAW OF ROSE MIDDLETON, THE HEIRS AT)
LAW OF CHARLIE MIDDLETON, THE HEIRS)
AT LAW OF W. H. DEAS, HOWARD CHAPLIN)
AND HARRIET CHAPLIN, and all other)
persons unknown, having or claiming any)
right, title or interest in or lien upon the)
real property described in the Complaint)
herein, being designated collectively as)
JOHN DOE or SARAH ROE, including all)
minors, persons in the Armed Forces, and)
insane persons and all other persons under)
any other disability who might have or claim)
to have any right, title, estate or interest in)
or lien upon the real property described in)
the Complaint herein,)

Defendants.)

This matter came before me for a trial on August 30, 2011 at the Office of the Master In Equity in Beaufort, South Carolina. This is an action to try title to a parcel of land and the trial was referred to the Master by agreement of the parties. There were four witnesses for the Plaintiff involving a title researcher and a registered land surveyor and there were three witnesses for Howard Chaplin and Harriet Chaplin including a registered land surveyor and a title researcher.

Upon a review of the pleadings, the exhibits in the record, a review of the legal

issues presented, and upon reflection of the testimony, I render these Findings of Fact, Conclusions of Law, and issue this Decree.

A. FINDINGS OF FACT

1. The parcel of real property which is the subject of this action is situated on St. Helena Island in Beaufort County, South Carolina.

2. Paragraphs 4 and 5 of the Complaint alleged that Benjamin Days, Benjamin Deas and Benjamin Daise was the same person. The documents and testimony in the record reflect this same common use of the several different last names of this person and the Court accepts the conclusion that all of these names refer to the same person. Throughout this Decree the name "Deas" will be used to reflect all three names for Benjamin Deas and also for his heirs.

3. The Plaintiff's Complaint alleges ownership of a parcel of land containing eight acres, more or less, known as Lot 2 of Ed Capers Plantation as described on a plat prepared by David E. Gasque, SCRLS, dated January 23, 2009 attached to the Complaint and designed as Tax Parcel R300-021-000-0018.

4. The basis of the claim by the Plaintiff is that she is the current title holder of this Lot 2 which has been conveyed since 1892 by the following chain of title:

- a. Daniel F. Appleton to Benjamin Deas in Deed Book 22 at Page 80 recorded in 1892.
- b. Benjamin Deas died intestate in a year unknown and Lot 2 was inherited by Samuel Deas as the sole son and sole heir of Benjamin Deas.
- c. Samuel Deas then died intestate in 1942 survived by these heirs:
 - (i) A wife, Anna Deas (now deceased since 1949).
 - (ii) A son - Manny Deas who died intestate before 1964 without a spouse or issue.
 - (iii) A son - Georgie Deas who died intestate before 1964 without a spouse or issue.
 - (iv) A daughter - Maria D. Middleton who died intestate about 1985 predeceased by her husband and predeceased by her two children: Rose Middleton and Charlie Middleton both of whom died before 1964 without a spouse or issue.

(v) James D. Smith (a/k/a James Deas) who was adopted by Samuel Deas.

d. As the sole surviving heir, James D. Smith conveyed the eight acres to the Plaintiff in Record Book 1238 at Page 1793 in 1999.

5. The Complaint alleges in Paragraph 11 that a cloud exists upon the title due to the intestate deaths of Benjamin Deas, Samuel Deas, Anna Deas, Mary Dease, Georgia Deas and Marie Deas Middleton.

6. Deed Book 22 at Page 80 to Benjamin Deas did not have any reference to a survey nor is there any survey referred to in the 1999 deed from James D. Smith to the Plaintiff in Record book 1238 at Page 1793. The 2009 plat by David E. Gasque by which the Plaintiff claims was actually prepared ten years after the Lot was deeded to the Plaintiff.

7. The Complaint joined the adjacent boundary owners of Tax Parcels R300-021-000-017 and R300-021-000-0020 to determine if there were any boundary disputes.

8. Howard Chaplin and Harriet Chaplin (herein the Chaplins) taxed for R300-021-000-0020 answered the Complaint by the defenses of (a) General Denial, (b) Stale Demand alleging use of Lot 2 by the Chaplins since 1997 without objection until the suit was filed in 2009, (c) Waiver of Rights since Lot 2 has alleged to have been used by the Chaplins from 1997 to 2009, and (d) Laches since Lot 2 was alleged to have been used by the Chaplins from 1997 to 2009. In addition, the Chaplins allege the Counterclaims of (a) Adverse Possession claiming continuous, hostile, open, adverse, notorious and exclusive use of Lot 2 from April 1997 until this suit began in 2009, and (b) adverse possession by color of title pursuant to Section 15-67-220 S.C. Code of Laws, as amended.

9. A Reply was entered by the Plaintiff which generally denied the Defenses and Counterclaims and alleged the Chaplins are the owners of a different parcel of land other than Lot 2 by being grantees of Record Book 1004 at Page 2385 recorded in 1998.

10. No other responsive pleadings were filed to the Complaint other than by the Chaplins.

11. Testimony was provided by (a) the Plaintiff, (b) her father James D. Smith, (c) Donna Reardon, a title researcher, and (d) David Gasque, a registered land surveyor, which provided these facts:

a. Deed Book 22 at Page 80 from Daniel F. Appleton to Benjamin Deas dated in 1892 recorded in 1896.

- b. Deed Book 1238 at Page 1793 from James D. Smith (claiming to be the sole heir of Benjamin Deas) to Lucille Patricia Smith.
- c. The above two deeds only contain a vaguely worded description of Lot 2 in Ed Capers Plantation.
- d. No survey is referred to in either of the above two deeds and there is no recorded nor unrecorded survey known to exist of the lots in Ed Capers Plantation.
- e. The first time that Lot 2 of Ed Capers Plantation was surveyed for the Plaintiff was by David E. Gasue on January 23, 2009 which is some ten years after the deed from James D. Smith to Lucille Patricia Smith.
- f. There was a drawing made of Ed Capers Plantation (T-236) by Arthur O. Christensen, registered surveyor, in 1961 but it is not a survey and it has several errors in it. For example, it does not contain footages nor bearings on any of the lots. While the lots are given numbers, there is no Lot 6. It goes from Lot 5 to 7?
- g. The original tax maps were created in 1954 but there are discrepancies on the early tax maps between what was stated about the location of Lot 2 in 1954 and what is stated about the location of Lot 2 at this time.
- h. Benjamin Deas also received title to what is designated as Lot 5 of Ed Capers Plantation in 1896 through Deed Book 22 at Page 79.
- i. Like Lot 2, there is no survey referred to for Lot 5 in Deed Book 22 at Page 79 nor is there any other known survey for that Lot.
- j. A portion of Lot 5 was sold upon a tax sale against Benjamin Deas to Isabell Cuthbert in Deed Book 591 at Page 124 in 1996.
- k. There are no deeds of public record out of Benjamin Deas. The last names of Deas and Daise were also checked with the same negative result.
- l. There are no probate records for (a) Benjamin Deas, (b) Anna Deas, (c) Mary Deas, (d) Georgie Deas, (e) Marie Deas Middleton, (f) Rose Middleton, or (b) Charlie Middleton. The last names Deas and Daise were also checked with the same negative results.

- m. A Birth Certificate #139-37-02238 was issued July 8, 2011 by the State of South Carolina for James D. Smith whose mother's name was Adele Smith and no father was listed.
- n. James D. Smith (who also claimed to be called Bobby Daise) was raised in the household of his mother, Adele Smith, at another location on St. Helena Island some several miles away from the Ed Capers Plantation area. Mr. Smith stated that he "believes" Samuel Deas was his uncle but he could not state the family relationship between himself and Samuel Deas. He also thought that Samuel Deas might be the uncle of his mother - Adele Smith.
- o. While James Smith "believes" that he was adopted by Samuel Deas, he does not have a Decree of Adoption issued by a Court.
- p. James D. Smith does not have any document signed by Samuel Deas that recognizes James D. Smith to be his son.
- q. James D. Smith never met Benjamin Deas.
- r. James D. Smith verified the family tree (other than his being the son of Samuel Deas) of Samuel Deas that is stated in the Complaint.
- s. In Responses to Requests to Produce Documents, James Smith answered "None" to the request to produce the document proving he was adopted, and, "None" to the request to produce a Court Order that confirms his adoption by Samuel Deas.
- t. Lot 2 is located on David Green Road.
- u. There was a house on Lot 2 until 1964 when James D. Smith pulled it down (some 45 years ago). The Lot has not been occupied since then by anyone in the Deas or Smith families.
- v. James D. Smith lives now on David Green Road about one-half mile from Lot 2. It is just right down the road. He goes by Lot 2 often.
- w. James D. Smith says he has farmed the land known as Lot 2.
- x. James D. Smith has had no personal communications with the Chaplins about Lot 2 but claims Mr. Chaplin planted some potatoes there against his wishes.

- y. James D. Smith talked to the brother of Mr. Chaplin and was told that the Chaplins bought Lot 2 from Joe Cuthbert. He told the brother of Chaplin not to plant there.
- z. James D. Smith now lives near enough to Lot 2 that he can see the Lot from his front yard and from his house he can see all the cars and vehicles driving up and down David Green Road. But, he did not see nor observe any farming or other activities on Lot 2 by the Chaplins nor did he observe the Chaplins going up and down David Green Road on tractors, in trucks and using farm vehicles on and about Lot 2.
- aa. The Plaintiff is 52 years old. She lived as a young person with Marie Middleton and her parents on St. Helena Island but that was not on Lot 2.
- bb. The Plaintiff lives now in the Columbia area and comes to St. Helena Island to visit her father (James D. Smith) on a regular basis, maybe three or four times a year on the weekends.
- cc. While she is here on visits to her father on David Green Road the Plaintiff can see Lot 2 but she did not see the Chaplins planting on Lot 2 or using tractors and vehicles on Lot 2 or up and down David Green Road. Her first knowledge of the Chaplins using Lot 2 was when the Answer in this case was served by the Chaplins.
- dd. The tax records and the descriptions of the locations of the lots in this area (i.e., the shape, size and dimensions of the lots) known as Ed Capers Plantation are confusing to everyone that testified.
- ee. Neither James D. Smith nor Lucille Patricia Smith were able to identify within the family tree of Benjamin Deas the persons named Nancy Johnson, John Deas, Celia Smith and Mary Deas.
- ff. The 2009 plat by Gasque of Lot 2 describes 8.58 acres in total with 147.11 feet being on the eastern boundary of David Green Road and 350.12 feet on the western boundary (the most valuable) on the marsh. The eastern road front on David Green Road for Lot 1 is 250.75 feet and the marsh front distance (the most valuable) on lot 1 is 236.54 feet on the Gasque plat.
- gg. When preparing the 2009 survey for James Smith, Mr. Gasque saw power lines on Lot 2 but saw no improvements and saw no house foundation.

- hh. While James D. Smith claimed to be adopted, the name he uses (as evidenced by the 1999 deed to the Plaintiff) is James D. Smith and the name his daughter uses is Lucille Patricia Smith.

12. Testimony was provided by (a) Howard Chaplin, (b) Maria Ernestine, a title researcher, and (c) David Youmans, a registered land surveyor, which provided these facts:

- a. Lot 5 of Ed Capers Plantation was originally deeded from Daniel F. Appleton to Benjamin Deas (the same person as the grantee to Lot 2) in Deed Book 22 at Page 79 in 1896. There is no recorded deed out from Benjamin Deas for Lot 5.
- b. Deed Book 36 Page 532 in 1918 is from the Heirs of Ben Deas and is a portion of Lot 5 of Ed Capers Plantation to Czar Deas. The Heirs of Ben Deas who signed that deed were Sam Deas, Nancy Johnson, John Deas, Celia Smith and Mary Deas.
- c. There are no deeds out from any of the persons stated to be Heirs of Ben Deas in Deed Book 36 at Page 532 to any person in the chain of title claimed by the Plaintiff.
- d. There is no recorded Will nor is there a recorded intestate probation of an estate for Benjamin Deas, Samuel Deas, Anna Deas, Nancy Johnson, John Deas, Celia Smith, Mary Deas, Adele Smith, Anna Deas, Manny Deas, Marie Deas Middleton, Georgia Deas, Rose Middleton, nor Charlie Middleton.
- e. There is no recorded marriage license in Beaufort County for Adele Smith and Samuel Deas.
- f. There is no recorded adoption Decree by a Court in Beaufort County from 1934 forward stating the adoption of James Smith by Samuel Deas.
- g. The 1983 tax notice for Lot 2 (Tax Parcel R300-21-0018) claimed by the Plaintiff indicates an improvement on it with a market value of \$3,400.00

The 1986 tax notice states that there is no improvement. This information is consistent with the testimony of James smith.

- h. Deed Book 19 at Page 394 in 1893 conveys Lot 1 of Ed Capers Plantation from Daniel F. Appleton to Abram Cuthbert but, like the deeds in the chain of title of the Plaintiff, there is no plat

referred to in this deed nor does it refer to any dimensions, bearings, footages, nor other means to identify the location, size or shape of the lot of land.

- i. The next deed in the chain of this Lot 1 is from the Treasurer by tax sale to Jonathan Cuthbert in Record Book 565 at Page 1381 recorded in 1990.
- j. The next deed in this chain is from Jonathan Cuthbert to Howard Chaplin and Harriett Chaplin in Record Book 1004 at Page 2385 dated April 16, 1997 and recorded January 9, 1998.
- k. Lot 3 of Ed Capers Plantation was deeded by Daniel F. Appleton to William Daise in Deed Book 19 at Page 228 in 1893, again without reference to a plat nor to dimensions, etc. Also, Lot 4 of Ed Capers Plantation was deeded to William Daise in Deed Book 19 at Page 228 in 1893, again without reference to a plat nor to dimensions, etc. A subsequent plat (#F-2664 in Deed Book 337 at Page 1187) of Lots 3 and 4 prepared by Niels Christensen, III, SCRLS, on April 15, 1977 revised November 2, 1979 states that the land south of Lot 3 is Lot 1 and is owned by Abraham Cuthbert, This location of Lot 1 would normally be the location of Lot 2 (next to Lot 3) but the plat does not state the title owner of Lot 2 who would be in the name of or family of Benjamin Deas. Rather it states the name of the record owner in the chain of title of the Chaplins.
- l. Howard Chaplin and Harriett Chaplin had the land they thought they were buying surveyed in January 1998 by James Pennington, Registered Land Surveyor, of Charleston, South Carolina. What Mr. Pennington surveyed he designated as Lot 1, but, like Niels Christensen, III, on Plat F-2664 that was prepared in 1977, the Lot 1 is adjacent to Lot 3. In other words, Mr. Pennington surveyed what would logically be Lot 2 adjacent to Lot 3. The Pennington survey contained 7.72 acres total of which one acre was marsh and another 1.00 acre was to be cut off for the daughter of Mr. And Mrs. Chaplin.
- m. Previous to the January 1998 Pennington survey, for about a year (their deed is dated April 1997) the Chaplins had entered into possession of the Lot Pennington surveyed as Lot 1 as they had been shown that area by their seller, Jonathan Cuthbert and his son, as the Lot they were purchasing. They testified Mr. Cuthbert represented to them that he owned everything between the County ditch at the southern boundary line of Lot 3 all the

way to the boundary line of the Sanders family which would be all of Lots 1 and 2 by the testimony of all the witnesses.

- n. Upon their entry in 1997 of the land they purchased, which was unoccupied and unused, the Chaplins have since regularly used tractors to clear several acres. They planted pine trees on a portion of the land and on another portion of the land they planted farm crops for the first five or six years such as sweet potatoes which they sold in a small local grocery store they own just a few miles away. The clearing and planting of the farm crops took place daily for several months each year as first planting and then harvesting took place. Since that time they have continued to go to the Lot several times a year and clear the farm crop portion and to trim and take care of the pine trees. During these frequent entries to the Lot they (and their helpers) used pick up trucks, farm tractors, and other pieces of farm equipment which they drove up and down David Green Road in front of the house of David Smith.
- o. Even though David Smith shopped in their store and they (and their farm helpers) were out on the land in big farm vehicles and they (and their farm helpers) were driving up and down David Green Road on a frequent basis from 1997 to 2009, the Chaplins did not receive any communication of any kind or any objection to their use of the Lot from James Smith (who testified he could easily see all vehicles going up and down the road) during these twelve years.
- p. In addition, the Chaplins did not observe during these twelve years (1997 - 2009) David Smith, nor the Plaintiff, nor any other persons acting on their behalf using, occupying or being on the area where Lots 1 and 2 is located.
- q. The first knowledge the Chaplins had of any claim by the Plaintiff and her father to any of the land in the area where Lots 1 and 2 would be located (the area between the County ditch and the Sanders Farm line) is when they were served the Complaint in this action in 2009.
- r. The January 1998 plat by Pennington (it says Lot 1 but is Lot 2) has 7.72 acres in total with 228.83 feet on the eastern boundary on David Green Road and 224.66 feet on the western boundary in the marsh. It indicates that there are 160.21 feet remaining on David Green Road for the eastern boundary line of Lot 1. The amount of marsh front for Lot 1 (the most valuable part) can not

be determined on this plat.

- s. In addition to the Pennington and Gasque plats, there is a third and a fourth plat both being prepared by David S. Youmans, SCRLS, on November 30, 2009 in which he surveyed the entire area containing both Lots 1 and 2. On one plat he overlayed the Gasque survey and on the other plat he overlayed the Pennington survey. He then drew a line on both of these plats to indicate an equal area for both Lots 1 and 2.

B. TRIAL OBJECTIONS

1. The Chaplins objected to the testimony of James D. Smith and the Plaintiff about the family tree of Benjamin Deas and Samuel Deas on the basis of the Dead Mans Statute stating that Mr. Smith and the Plaintiff would benefit from the testimony so their testimony should not be allowed. See Section 19-11-20 S.C. Code of Laws 1976, as amended.

In Davie v. Atkinson, 291 SC 188, 352 SE2d 517 (Ct. App. 1987) our Appellant Court has held that this statute excludes testimony by a witness belonging to one or more categories of these classes of persons:

- a. A party to the action.
- b. A person with a legal or equitable interest which may be affected by the action.
- c. A person who has had such an interest, but which has been in any manner transferred to a party to the action.
- d. Any assignor of anything in controversy in the action.

It is plain that the Plaintiff falls into categories 1 and 2 in this case and James Smith falls into categories 3 and 4.

In addition, the Davie v. Atkinson, supra, states that all three of these factors must be present:

- a. The testimony is in regard to a transaction or communication between the witness and a person deceased.
- b. The testimony is by a person prosecuting (or defending) an action as an heir of the deceased person.

- c. When the present or previous interest of the witness may in any manner be affected by the testimony or the event.

I find that these factors are not present as both James Smith and the Plaintiff testified that they did not know Benjamin Deas. However, these three factors are present as to the testimony of James Smith regarding Samuel Deas as James Smith did know him.

Thus, the testimony by James Smith as to his being an Heir of Samuel Deas is not admissible.

2. After the testimony of James D. Smith the Chaplins moved the Court for a directed verdict that the facts prove he is not an Heir of Benjamin Deas. The Court held that decision to the end of the testimony.

The testimony revealed these facts:

- a. An Affidavit of James Smith wherein he claims to be an "adopted" son of Samuel Deas and the mother of James Smith was Adelle Smith "...who lived in Samuel and Anna's house...". There is no statement in the Affidavit of any family relationship between Adelle Smith and Samuel Deas.
- b. No public records or Court approved adoption by Samuel Deas of James Smith.
- c. A State of South Carolina Birth Certificate for James Smith (but not James Daise) whose mother was listed as Adle Smith and without the name of a father.
- d. No other document nor writing by Samuel Deas to indicate that James Smith was his biological son or that he had adopted James Smith.
- e. The testimony of James Smith that Samuel Deas was his uncle but he could not identify how Samuel Deas was his uncle, i.e., what is the family relationship.

In response, James Smith claimed lack of standing by the Chaplins to raise the issue and James Smith claimed that his reputation in the local community as the adopted child of Samuel Deas is sufficient to overcome the issue.

Standing is the concept that a litigant must have an interest in the subject matter of the action and the interest must be a personal one. 4 SC

Jurisprudence, Actions § 23. In this case James Smith claims ownership of the land in question as the "sole heir" of Benjamin Deas and also as the "sole heir" of Samuel Deas. The Chaplins claim ownership of the same parcel of land by virtue of their use of the land for some 12 years which they assert by (a) adverse possession, (b) laches, (c) stale demand, and (d) color of title. Surely these assertions by the Chaplins are such a personal interest in the outcome of the trial that these persons have standing by any definition.

Finding that the Chaplins have standing I find also that James Smith is not an Heir of Benjamin Deas nor Samuel Deas. The facts stated above simply do not support that James Smith is in any manner related by blood or legal adoption to either of them much less that he is an heir of either one of them.

That being my conclusion, the only way that James Smith and his assignee, the Plaintiff, can prevail is on the theory of adverse possession by them.

3. The Plaintiff did not plead adverse possession. Paragraphs 1 to 9 of the Complaint allege the family tree of Benjamin Deas who acquired title to Lot 2 by a deed in 1892. While Paragraph 11 refers to the exclusive and continuous possession since 1892 of Benjamin Deas and his heirs, those allegations are not sufficient to allege all of the basic five elements of the cause of action of adverse possession. See 8 SC Jurisprudence, Adverse Possession, § 15. In addition, the decision that the court is asked to make in this case by the Plaintiff in Paragraph 11 of the Complaint is to clear the cloud that exists due to the fact that Benjamin Deas and persons named as his heirs died intestate without estate proceedings of record. That is not a request of the Court to determine the ownership of James Smith or Lucille Patricia Smith by adverse possession.

Nevertheless, the Court will address the issue of the adverse possession of James Smith and/or the Plaintiff.

C. CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties hereto and the subject matter of the causes of action set forth in the pleadings.

2. Before this Court can determine the ownership of Lot 2, we must be able to describe Lot 2. Because of the confusion in the evidence about the description and location of Lots 1 and 2, the Court must determine the description of both Lots 1 and 2.

3. No witness (including two registered land surveyors and two experienced title researchers) could produce a survey of the entirety of Ed Capers Plantation nor of either Lots 1 or 2 before 1998 (the Pennington plat) nor could any of them testify as to the sizes or shapes of either Lot (i.e., the width, length, etc.) other than that both Lots are to contain 8 acres, more or less. When there is a question of location of a parcel of land that can not be reduced to any definite or fixed rule, our Courts have adopted these rules of resorting to these factors to considered:

- a. First, natural boundaries. In this case there is only one natural boundary which is common to both Lots - the marsh.
- b. Second, artificial marks. In this case there is only one artificial mark common to both Lots - David Green Road.
- c. Third, adjacent boundaries. In this case the adjacent owner on the south of Lot 1 is fixed, i.e., the Sanders Farm. On the north of Lot 2 we have Lot 3 but it also arises from the situation of there not being a subdivision survey of Ed Capers Plantation.
- d. Fourth, courses and distances. In this case such matters do not exist prior to the Pennington survey in 1998.

See Holden v. Cantrell, 100 SC 265, 84 SE 826 (1915).

Thus, in the absence of evidence to confirm a previous description of these Lots 1 and 2, this Court must do so. I conclude that the two surveys prepared by David S. Youmans, SCRLS, on November 30, 2009 stated the correct description of these two Lots which descriptions are set forth on Attachment A hereto. I ORDER the Registrar of Deeds of Beaufort County to record the survey showing the overlay by David S. Youmans of the Pennington plat so that all parties to this action and future owners of these parcels of land (Lots 1 and 2) will have the descriptions in the public records.

4. We now come to the title to Lot 2 that is in dispute.

As to Lot 2, I conclude that upon the conveyance in Deed Book 22 at Page 80 to Benjamin Deas he became the owner of that Lot. Subsequently, he died intestate in a year unknown (but at least prior to Deed Book 36 at Page 532 in 1918) and left several persons we know to be his heirs (Sam Deas, Nancy Johnson, John Deas, Celia Smith and Mary Deas) in 1918 but we do not know how these persons are his heirs (e.g., are they children, grandchildren, siblings, etc.?) as Deed Book 36 at Page 532 does not tell us and there is no testimony about these persons except for testimony about the family of Sam (or Samuel) Deas.

The family tree of Sam Deas is in the record but he has no living heirs

according to that testimony. By his own admission and the other facts in the case, James Smith is not an Heir of Benjamin Deas nor Samuel Deas.

Thus, I conclude that there is no proof of any known living Heir of Benjamin Deas.

5. As there is no known living heir of Benjamin Deas, has there been any use of Lot 2 that would give rise to adverse possession? It was not plead by the Plaintiff but I will address the issue since there was much testimony about use of the Lot.

Neither James Smith nor the Plaintiff have lived on the Lot since 1964. James Smith testified he tore the house on the Lot down in 1964 (some 47 years ago) and no one has lived on the Lot since then. The Plaintiff has not used the Lot. James Smith may (?) have occasionally planted a garden there. However, none of these acts gives rise to adverse possession.

Thus, neither James Smith nor the Plaintiff can prevail on adverse possession.

6. The testimony of the use of Lot 2 by the Chaplins is that they entered the occupation and use of Lot 2 in April of 1997 (when they obtained a deed to Lot 1) and they proceeded to cultivate the land (by planting pine trees that are still growing there and also seasonal crops). While they may not have planted the same seasonal crops every year, nor they may have not planted seasonal crops every year, they nevertheless used the Lot in a manner that farm lands are used in such a rural and agricultural environment where this Lot exists to convince me that their use was continuous, hostile, open, adverse, notorious and exclusive from April 1997 until the Complaint in this action was served on them in July of 2009 (over 12 years). I conclude that the elements of the concept of "color of title" set forth in SC Code, Sections 15-16-210, et seq. have been met by the Chaplins as was pleaded by them.

DECREE

It is hereby ORDERED, ADJUDGED, and DECREED as follows, to wit:

- A. James D. Smith is not an heir of Benjamin Deas nor is he an Heir of Samuel Deas.
- B. Neither James D. Smith nor the Plaintiff have adversely possessed Lot 2 which is described on Attachment A hereto.
- C. The owners of Lot 2 (described on Attachment A hereto) are Howard Chaplin, Jr. And Harriett Chaplin.

- D. The Registrar of Deeds of Beaufort County, South Carolina shall record the plat of August 30, 2009 by David S. Youmans, SCRLS, that is described on Attachment A hereto.

Executed on _____, 2011.

Marvin H. Dukes, III
Master In Equity
Beaufort County, South Carolina

Attachment A

Lot 1: All that parcel of real property situate on St. Helena Island in Beaufort County, South Carolina designated as Lot 1 of Ed Capers Plantation and described as to metes, courses, bounds, distances, and directions on a plat (P14189) prepared by David S. Youmans, SCRLS, on November 30, 2009 which contains these metes and bounds: Beginning at an iron rebar on the western right of way of David Green Road which rebar is the Northeast most corner of the Lot; thence proceeding S36°33'59"W for 50.79 feet (Line AA) to an iron rebar; thence proceeding S36°33'59"W for 156.86 feet to an iron rebar; thence proceeding N74°52'26"W along the boundary line of the Sanders Farm for 1,451.73 feet to a found concrete marker; thence proceeding from the Southern end of Line AB to the Northern end of Line AG to an iron rebar; thence proceeding S71°03'47"E for 521.14 feet to an iron rebar; thence proceeding S71°03'47"E for 153.87 feet to an iron rebar; thence proceeding S71°03'47"E for 805.02 feet to an iron rebar that is the point of beginning.

Lot 3: All that parcel of real property situate on St. Helena Island in Beaufort County, South Carolina designated as Lot 2 of Ed Capers Plantation and described as to metes, courses, bounds, distances and directions on a plat (P14189) prepared by David S. Youmans, SCRLS, on November 30, 2009 which contains these metes and bounds: Beginning at a found iron rebar on the western right of way of David Green Road which rebar is the northeastern most corner of Lot 2; thence proceeding S36°33'59"W for 136.46 feet to an iron rebar; thence proceeding S36°33'59"W for 43.18 feet to an iron rebar (Line BT); thence proceeding N71°03'47"W for 805.02 feet to an iron rebar; thence proceeding N71°03'47"W for 153.87 feet to an iron rebar; thence proceeding N71°03'47"W for 521.14 feet to an iron rebar; thence proceeding from the southern point of Line AX to the northern point of Line BD at an iron rebar; thence proceeding S67°06'29"E for 336.55 feet to an iron rebar; thence proceeding S67°06'29"E for 123.64 feet to an iron rebar; thence proceeding S67°06'29"E for 279.96 feet to an iron rebar; thence proceeding S65°59'49"E for 698.22 feet to an iron rebar which is the point of beginning.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Case # 2009-CP-07-2608

EXHIBITS

Plaintiff(s) Lucille Patricia Smith
vs.
Defendant(s) The Heirs at Law of Benjamin Deas

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 affidavit of Donna Reardon	1 affidavit of James D. Smith	1
2 plat	2 birth certification	2
3 title to real estate	3 title to real estate	3
4 one page writting	4 plat	4
5 2 page wrtting	5 boundary survey	5
6 title to real estate	6 boundary survey	6
7 layout of Ed Capers Plantation	7 land survey	7
8 plat	8 property of the heirs of William H. Deas	8
9	9 boundary survey	9
10	10 2 page writtings	10
11	11 tax title	11
12	12 3 page writtings	12
13	13 deed	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

Court Reporter Joanne McDonald Trial Judge Dukes
Clerk of Court Joanne McDonald

Date Received from MIE's office on 11/28/12

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2)
 3 COUNTY OF BEAUFORT)
 4)
 5 PATRICIA SMITH, et al.,) CASE NO.: 09-CP-07-2608
 6)
 7 Plaintiff,)
 8)
 9 v.)
 10)
 11 HEIRS, et al, BENJAMIN,)
 12)
 13 DAISE, Et al.,)
 14)
 15 Defendants.)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

Reference hearing held before the Honorable
 H. Marvin Dukes, III, Master in Equity and Special
 Circuit Judge for Beaufort County in his chambers
 at the Beaufort County Courthouse, Beaufort, South
 Carolina commencing at approximately 10:00 a.m. on
 the 30th day of August, 2011.

1 !

2 APPEARANCES

3 For the Plaintiff: Alysoun Eversole, Esquire
4 1509 King Street
5 Beaufort, SC 29902

6 For the Defendant: J. Thomas Mikell, Esquire
7 Post Office Box 1727
8 Beaufort, SC 29902

9 Reported by: Joanne B. McDonald, CVR

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David Youmans	
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Maria Ernestine	
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Cross Examination	None

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1 COURT: Good morning, everyone. We are
2 here in Case 09-CP-07-2608. This is Marcelle
3 Patricia Smith vs. Heirs of Benjamin Daise,
4 et al. and I have spoken briefly with the
5 attorneys and am somewhat aware of the issues
6 in the case. I am happy to hear from you.

7 MS. EVERSOLE: Your Honor, this is a
8 quiet title action brought by Patricia Smith
9 to identify the boundary lines on a survey
10 that we had done and on the basis that there
11 was no probate administrations of the Heirs
12 of Ben Daise, who was the owner of the
13 property and got title to the property in
14 1892 I believe it was. It is an action of
15 quiet title. We served the adjoining
16 landowners and Bernice Davis who is an owner
17 to the north filed an Answer admitting the
18 allegations as far as the boundary is
19 concerned to the north and that she knew that
20 James Smith grew up on the property known as
21 Bobby Daise and also the Answer of the
22 Chaplains who have asserted several demands
23 or defenses of waiver, laches, adverse
24 possession and adverse possession under color
25

1 of title. Those are the issues in the case
2 and we are just prepared to move forward with
3 our testimony.

4 COURT: All right, please call your
5 first witness.

6 MS. EVERSOLE: For the first it's not a
7 witness. I have an Affidavit we discussed it
8 prior to this trial. The Affidavit of Donna
9 Reardon. It is the documents of Lot 2 which
10 is the subject of this litigation over on
11 David Green Drive and I would move that
12 Affidavit into evidence and then let you
13 review the documents.
14

15 COURT: And as I understand the
16 stipulation is this the Affidavit that
17 pertains to - allow Mr. Mikell to take a look
18 at. Is that correct?
19

20 MR. MIKELL: I was only given that about
21 an hour ago now out in the hallway and was
22 advised that Reardon I believe her name is,
23 is ill or not available to testify today.

24 MS. EVERSOLE: Her son is ill.

25 MR. MIKELL: In any event, I am not able
to -- I haven't had the chance to review that

1 Affidavit or the documents and certainly I
2 can't cross-examine the lady and I may not
3 have anything adverse to it. I just don't
4 know without having the opportunity to review
5 it and comment on it and so forth so I would
6 like to have that opportunity.

7 COURT: All right and I understand the
8 stipulation. Basically we are going to hold
9 the record open for a week to ten days. Is
10 that sufficient time to allow you an
11 opportunity to look at it and at your option
12 we will either allow it as an exhibit at that
13 point and close the record if appropriate or
14 re-open the record for testimony and your
15 cross-examination of Ms. Reardon. Is that,
16 am I correct in understanding the
17 stipulation?
18

19 MS. EVERSOLE: Well Your Honor I think
20 the documents, all of the documents are
21 attached to that are agreed. There is no
22 dispute about the documents themselves.
23

24 COURT: No, I understand. We are
25 talking just about the Affidavit of Donna
Reardon?

1 MS. EVERSOLE: Yes.

2 COURT: And Mr. Mikell's ability, which
3 he may waive, to cross-examine and we are
4 going to hold the record open for the ten
5 days while he chooses whether or not he wants
6 to have that right-of-way. Does that
7 represent--

8 MR. MIKELL: What I understand, yes,
9 sir.

10 COURT: But the attachments and again as
11 I understand Mr. Mikell may not have had an
12 opportunity or maybe he has, to review the
13 documents themselves. Have you had an
14 opportunity to review the documents attached
15 to the Affidavit?
16

17 MR. MIKELL: I quickly glanced through
18 them. I didn't see anything that I had not
19 seen before, but again I have not had an
20 opportunity to really study them.
21

22 COURT: So same stipulation as to the
23 documents, but at this point they are
24 probably the same ones that everyone has
25 seen.

1 MS. EVERSOLE: They were provided
2 individually.

3 COURT: So essentially we will keep the
4 record open if we need to. If we don't, we
5 will close it within about ten days based on
6 when you have an opportunity to review the
7 affidavit and documents. All right.

8 MS. EVERSOLE: All right and based on
9 that, I think I need to just describe for you
10 Your Honor so you will know where this
11 property is. In that first document is lot -
12 - describes Lot 2 is conveyed to Ben Daise.

13 COURT: This is the Warranty Deed?

14 MS. EVERSOLE: That was the first deed
15 into Ben Daise dated --

16 COURT: I am looking at Exhibit A so
17 this is a 1999 deed which is probably not the
18 one you --

19 MS. EVERSOLE: No, I am sorry, the first
20 one, I apologize --

21 COURT: Exhibit E, maybe?

22 MS. EVERSOLE: That is the deed of
23 Patricia Smith from James D. Smith.
24
25

1 COURT: I think I see a handwritten
2 deed, is that the one we are talking about?

3 MS. EVERSOLE: Okay the first deed is
4 the Warranty Deed from James D. Smith into
5 Patricia Smith or Lucille P. Smith. I guess
6 I should say. That's how it is written in
7 here. For Lot number 2 on a plat of Ed
8 Capers Plantation containing eight acres,
9 more or less, and it is the same property
10 according to the deed that was conveyed to
11 Benjamin Daise by deed of Daniel F. Appleton
12 dated January 14, 1892 and recorded in Deed
13 Book 22 at Page 80. The next document is
14 that deed into Benjamin Daise recorded in
15 Deed Book 22 of Page 80.

16
17 COURT: What date was that? What was
18 22, 80?

19 MS. EVERSOLE: January 14, 1892. The
20 next document Exhibit C is the Honeycutt tax
21 maps, 1954 Honeycutt tax map and according to
22 the Affidavit Paragraph 8 she says she found
23 no records on -- no recorded plats on Ed
24 Capers' plantation as a whole nor did she
25 find any for Lot number 2. There is a

1 discrepancy in the tax map and she refers to
2 four exhibits. The first being Exhibit C
3 which is the 1954 Honeycutt tax map and she
4 describes the property of Lot 2 appears to be
5 Parcel number 19 on that tax map and it also
6 is written on that tax map the name Ben
7 Daise.

8 COURT: I am trying to focus on the fine
9 print on this realizing I am going to need
10 reading glasses sooner rather than later.

11 MS. EVERSOLE: I did bring a magnifying
12 glass.

13 COURT: Oh, good. I am not the only one
14 that suffers. Okay, thanks. Let's see, so
15 the one that --

16 MR. MIKELL: It is the second one from
17 the bottom.

18 COURT: Second one from the bottom that
19 appears to be bisected by a slew or
20 something, is that correct?

21 MR. MIKELL: Correct.

22 MS. EVERSOLE: Yes.

23 COURT: Okay and there is something
24 written on here. I can't read it, but I am
25

1 sure you all will tell me what it means but
2 anyway -- they are between 18 and 20. Okay.

3 MS. EVERSOLE: All right, now the next
4 exhibit is Exhibit D and that is the 1986 tax
5 map. It is a 1986 tax map that shows that
6 same lot and acreage as being Lot number 8,
7 Parcel number 18 but shows it as Lot 2 if you
8 can see that.

9 MR. MIKELL: In other words the tax
10 numbers changed from 19 to 18.
11

12 MS. EVERSOLE: And the same is true for
13 the 1997 tax map which is Exhibit E. It
14 shows it -- it shows Lot 2 as being Parcel 18
15 and then the most current tax map which is
16 Exhibit F does not refer to a lot number
17 which it merely shows it as Parcel 18 and
18 that is a big plat but it just shows it as a
19 parcel. The next Exhibit G is a composite of
20 four documents. It is just tax assessor's
21 records for both Parcels 18 and 15. She
22 found that Ben Daise owned also Lot number 5.
23 She found the deed for that and that's
24 Exhibit number H and that was conveyed to him
25 in January, Exhibit H November, excuse me,

1 December 23, 1892. It is not --- she just
2 found this. It is not relevant necessarily
3 to this suit.

4 MR. MIKELL: It looks -- it definitely
5 is.

6 COURT: Okay.

7 MS. EVERSOLE: Exhibit number I, Lot
8 number 5 was sold at a tax sale for the
9 nonpayment of 1989 taxes against Ben Daise,
10 the heirs of Ben Daise and then the final
11 documents are three aerial maps --
12

13 COURT: That one was Parcel 15 according
14 to the tax deed.

15 MS. EVERSOLE: Yes, that was Lot 5.

16 MR. MIKELL: That's a portion of Lot 5,
17 Your Honor.

18 COURT: I am trying to find 15 here on
19 the tax map. I am sure you all will point it
20 out to me. It looks like 13, that would be
21 15. All right, thank you.

22 MS. EVERSOLE: And then the last
23 documents are three aerals used. One is
24 1978 of the area and the last one is 1988 of
25 the area and the next one is 2002 and that

1 would be Exhibits J, K and L. And if you
2 look at those exhibits you will see that it
3 is vacant land.

4 COURT: Luckily they are all well
5 marked. I need to tape this one on the wall.
6 I might tape this one on the wall. Is there
7 any tape up there anywhere. I will get some
8 hold on a second. Mr. Mikell, tell me when
9 it looks level.
10

11 MR. MIKELL: That's pretty good.

12 COURT: Okay, so it is this area we are
13 talking about.

14 Mr. MIKELL: You want to color code the
15 Lot 2?

16 COURT: Why don't we let the -- if we
17 have witnesses who are going to show us --
18 let them do it.
19

20 MS. EVERSOLE: That's the 1988 aerial
21 view of the area.

22 COURT: I have never done this before
23 but what the heck. This may be an -- let's
24 tape that up. 1988, all right.

25 MS. EVERSOLE: All right and then Ms.
Reardon says that there were no mortgages or

1 restrictions associated with the property in
2 the public records. She found no deeds out
3 of Benjamin Daise, Ben Daise and the
4 different spellings of Days, Deas or Daise
5 for the property. She found no probate
6 administration for Benjamin or Ben Daise and
7 she found no quiet title action to the
8 property or the Heirs of Benjamin Daise or
9 Ben Daise all those various spellings. She
10 was also asked to look for any probate
11 records for the Heirs of Ben Daise or Samuel
12 Daise and that would be Anna Daise, Manny
13 Daise, Georgie Daise, Marie Daise Middleton,
14 Rose Daise, Dave Daise Middleton or Charlie
15 Middleton. The only thing she found was a
16 state department in -- a deed filed by the
17 State Department in the Probate Court against
18 Anna Daise dated November 2, 1961 and that is
19 essentially the Affidavit.
20
21

22 COURT: All right, and of course cross-
23 examination thereof with the exception of the
24 stipulation we discussed earlier.

25 MS. EVERSOLE: All right, we would call
Dave Gasque.

1 DAVID GASQUE, called as a
2 witness, after being duly sworn,
3 testified as follows:

4 BY MS. EVERSOLE:

5 Q. What is your full name please?

6 A. David Edwin Gasque.

7 Q. And what is your occupation?

8 A. I am a licensed land surveyor.

9 Q. How long have you been a surveyor?

10 A. Twenty-six years.

11 Q. Okay and where did you get your education?

12 A. The Citadel.

13 Q. Okay, that was in surveying?

14 A. Surveying related courses, yes, ma'am.

15 Q. Okay. And do you have continuing education
16 courses that you have to participate in?

17 A. Yes, ma'am.

18 Q. And you have participated in those and complied
19 with the rules and regulations for that?

20 A. Yes, ma'am.

21 Q. Okay, do you have any special training other than
22 your surveying that is related to your surveying?

23 A. Just surveying.

24 Q. I would offer Mr. Gasque as an expert surveyor.
25

MR. MIKELL: No objection.

BY MS. EVERSOLE:

Q. Were you asked to prepare a survey for Marcelle Patricia Smith?

A. Yes, ma'am.

Q. How did that come about?

A. January -- I believe it was January, '09 she contacted my office and ordered a boundary survey for property.

Q. Okay, do you know the reason for that when she came to you?

A. She just wanted to get a property survey to see where it was at and just -- to see what she owned and the family.

Q. Okay, what steps did you take to prepare for them?

A. We pulled the deeds and records and plats in '09 and then we go out actually do the field work on the ground.

Q. Okay and I am going to show you what's been marked as Plaintiff's Exhibit Number 2 and ask you if that is the survey that you prepared.

MR. MIKELL: Wait a minute. When was that marked as Exhibit 2?

1 MS. EVERSOLE: I am sorry, I just
2 marked it for identification purposes.

3 COURT: Let's mark it 2.

4 MR. MIKELL: I am not objecting, I
5 just wanted you to --

6 COURT: No, you are right. So
7 let's mark that one. Did you all put a
8 sticker on it?

9 MS. EVERSOLE: I have stickers. I
10 just don't have them numbered.

11 COURT: Okay. Well the package
12 that included the Affidavit was
13 Plaintiff's 1. Is that correct?

14 MS. EVERSOLE: Yes.

15 COURT: And so this will be 2. You
16 are not going to object to the plat, are
17 you?

18 MR. MIKELL: No.

19 COURT: Plaintiff's 2 without
20 objection so why don't we just mark that
21 one

22 (WHEREUPON PLAINTIFF'S
23 EXHIBIT NUMBERS ONE AND
24
25

1 TWO WERE MARKED AND
2 ENTERED INTO EVIDENCE).

3 MR. MIKELL: Yes, it is.

4 BY MS. EVERSOLE:

5 Q. And what did you rely on when you -- to create
6 this plat?

7 A. Well when we first start a job, we met -- I can't
8 remember who it was. It was an older gentleman who
9 took us out to the site. He showed us where his home -
10 - the old home site. I don't know if it was his or
11 family and then after we did that in the research we
12 discovered that -- they kept talking about Lot 2 at
13 Capers Plantation. Well we could not find a plat of Ed
14 Capers Plantation. We did come up with some sketches
15 or some compilation maps where they had put in and we
16 noticed there were problems. In the deed for Lot 2, I
17 can't remember what date it is now, but they talked
18 about Lot 2 being eight acres. So we pulled the
19 adjacent properties and using the adjacent deeds and
20 whatever plats we could find and surveying down to the
21 line down next to the Sanders' tract we were able to
22 come up with this plat.
23

24 Q. Okay, the records that you pulled, did you pull
25 the deeds for Lot 1?

1 A. Yes.

2 Q. I would ask you to take a look at this document
3 and is that the most recent deed for Lot 1 that you
4 found?

5 A. Yes, ma'am I believe it is.

6 Q. And that's the one in which you relied?

7 A. Yes, ma'am.

8 Q. Okay can I mark this as Plaintiff's Exhibit Number
9 3?
10

11 MR. MIKELL: No objection.

12 (WHEREUPON PLAINTIFF'S EXHIBIT
13 NUMBER 3 WAS MARKED AND
14 ENTERED INTO EVIDENCE).
15

16 BY MS. EVERSOLE:

17 Q. Okay and how many acres is Lot 1 according to that
18 deed?

19 A. In the deed it called for eight acres.

20 Q. And where did you place Lot 1 on your plat?

21 A. I placed Lot 1 to be adjacent to the Sanders'
22 tract and it would be to the southwest of Lot 2.

23 Q. Okay and what told you that Lot 1 was actually
24 between the Sanders' tract and then Lot 2?

25 A. Well we had tax map identification and if we look
back at some older documentation, some sketches that we

1 put together you would see the lot count you know 4, 5
2 through and so on and even though we didn't have a plat
3 that said exactly where Lot 2 was, it was the only
4 place in natural order for it to be.

5 Q. Okay, what are those sketches that you looked at?

6 A. That's one of them.

7 Q. This is one of them?

8 A. Yes. There was a drawing from the notes of Arthur
9 Christian of Ed Capers Plantation and if you, look Lot
10 1 is supposed to border Ed Sanders and if you also look
11 at the numerical sequence it is 1,3,5,4 so we were able
12 to find deeds and plats that established where 3 and 4
13 were and when we surveyed from the line of Sanders up
14 to the ditch, we found 16 acres. So we found that it
15 had enough room to accommodate two eight acre tracts
16 which would make sense.

17 Q. So the deeds that you relied on for Lot 1 and Lot
18 2, the deed for Lot 2 has been entered in as Exhibit 1
19 -- Lot 2 would be Exhibits to the Affidavit I think it
20 is B and C.
21

22
23 COURT: This is everything except
24 that which is on the wall. It is still
25 there.

MS. EVERSOLE:

1 Q. That would be 1A. Is that for Lot 2?

2 A. Yes, ma'am.

3 Q. And that is the one you relied on for?

4 A. And the prior one to that.

5 Q. Lot 1 and Lot 2.

6 A. Yes, ma'am.

7 MR. MIKELL: I am sorry, I'm
8 confused. You said Lot 1 and Lot 2, so
9 what are we looking at here?

10 A. Lot 2 I relied on this for Lot 2.

11 MR. MIKELL: Which is -- this is
12 meaning what? How do you want to
13 identify it?

14 MS. EVERSOLE: Exhibit 1
15 Plaintiff's Exhibit 1A.

16 A. And then this plat -- this deed referred to an
17 older date and I also relied on that.

18 Q. And that would be -- would this be the deed that
19 is referenced in Exhibit 1A?

20 A. Yes, ma'am.

21 Q. Okay.

22 A. And there's 1B.

23 Q. That would be 1B. Okay, so again explain for me
24 the -- but Lot 1 called for eight acres, Lot 2 called
25

1 for eight acres but this diagram on this document on Ed
2 Capers Plantation shows Lot 1 as consisting of 16
3 acres.

4 A. This document only shows -- this lot as only eight
5 acres but it shows that Lot 1 is supposed to border Ed
6 Sanders. Then it skips Lot 2 altogether and it goes
7 three and four. So I was able to go back and find the
8 deeds -- the old deeds going into Lot 1, Lot 2, Lot 3
9 and Lot 4 and I was able to -- went outside and got the
10 deeds for Lot 3 and 4, I was able to establish our
11 northeast line and it was at a ditch at the time and
12 the ditch is still there. And then my problem came in
13 as Lot 1 and 2 how am I going to make that work? And
14 when we went down and surveyed to the Sanders tract we
15 find the line dam and it is fenced. Found the corner
16 at one end of it, and we found sixteen acres of land.

17 Q. Which became then the dividing line between Lot 1
18 and Lot 2?
19

20 A. In my opinion Lot 1 and 2 existed there.
21

22 Q. All right, did you rely on any other
23 documentation?

24 A. I relied on the deeds going into Lot 3 and 4.

25 Q. I am going to show you now a document and ask you
if that would be for Lot 3?

1 A. This is the deed, yeah, from Appleton into Burke
2 for Lot number 3.

3 Q. And I would ask that that be marked as Plaintiff's
4 Exhibit Number 4 and moved into evidence.

5 COURT: Plaintiff's 4 without
6 objection.

7 MR. MIKELL: Objection, let's put
8 the deed reference with it whatever it
9 is. Page 19 at 228?

10
11 (WHEREUPON PLAINTIFF'S
12 EXHIBIT NUMBER 4 WAS
13 MARKED AND ENTERED INTO
14 EVIDENCE).

15 BY MS. EVERSOLE:

16 Q. And then for Lot 4 I am asking you to look at that
17 and ask if that is the deed into Lot 4 upon which you
18 relied?

19
20 A. Yes, ma'am it is.

21 Q. I would move that into evidence as Plaintiff's
22 Exhibit Number 5.

23 COURT: Book and Page number?

24 MS. EVERSOLE: Book 220 at Page 19
25 and 229.

1 (WHEREUPON PLAINTIFF'S

2 EXHIBIT NUMBER 5 WAS MARKED

3 AND ENTERED INTO EVIDENCE).

4 BY MS. EVERSOLE:

5 Q. Okay, in your research did you find other
6 documents that told you different things about the
7 property?

8 A. There was a plat by Niels Christiansen of Lot 3
9 and 4.

10 Q. And that would be -- was that recorded in a deed
11 in Deed Book 337 at 1185? I will show you that.

12 A. Yes, ma'am.

13
14 MS. EVERSOLE: I would move that
15 into evidence as Plaintiff's Exhibit 6.

16 MR. MIKELL: No objection.

17 (WHEREUPON PLAINTIFF'S

18 EXHIBIT NUMBER 6 WAS MARKED

19 AND ENTERED INTO EVIDENCE).

20 MR. MIKELL: What is the book and
21 page on it?

22 A. Is it on there somewhere? 337, 485? 337, 185.

23 BY MS. EVERSOLE:

24 Q. You said you relied on a plat in here or the whole
25 deed?

1 A. Well, I relied on the plat. The plat talks about
2 the deed.

3 Q. Okay.

4 A. And then when I get to the deed it shows me a
5 drawing of Lot 3 and Lot 4.

6 Q. You mean when you get to the plat?

7 A. Yes.

8 Q. It shows you Lot 3 and Lot 4. What does it tell
9 you in there?

10 A. Well basically here again there was a ditch
11 running on that line and we were able to find those
12 markers and that would be to the northeast of us. So
13 that helped me establish the line between 2 and 3.

14 Q. Okay, now do you put any weight in the other
15 information in this plat that says that Ben Daise owned
16 Lot 3?

17 A. Well the deeds talked about William Daise both 3
18 and 4 so I really -- I don't get that tied up into the
19 names on the plat, but I did see it was Daise but it
20 was part of the family.

21 Q. Okay and you will notice on there that it has
22 Chaplain with a question mark down south of that Lot 3.
23 Can you explain that at all?
24
25

1 A. It has Cuthbert and I don't know if they just took
2 it straight off of this sketch that we talked about
3 earlier of Ed Capers Plantation. I have no idea.

4 Q. Okay. All right well that -- was there anything
5 else upon which you relied in documentation upon which
6 you relied in doing this survey?

7 A. On the ditch itself I did contact the county and
8 talk to R. D. Trogdon, III or the IV and asked him
9 about if they had cut the ditch down and did they get
10 permission and all that and he said they had and if
11 memory serves me right, he got it from R. Cline.

12 Q. And the tax maps, is this a subdivision in your
13 opinion?
14

15 A. Well we can't find Ed Capers Plantation. I have
16 searched. I went to the state archives. I searched.
17 I can't find it but they definitely talked about Lot 1,
18 Lot 2, Lot 3 and Lot 4. That usually tells me there is
19 a plat out there somewhere but we couldn't find it and
20 when I set the line between Lot 1 and 2 because Lot 3 -
21 - between 2 and 3 I felt pretty confident. We had
22 documentation -- documentation, evidence on the ground.
23 Between 1 and 2 what we relied on and we got enough
24 land for everybody and so what I did is, I made sure
25 that Lot 1 got eight acres. I held the sketch of the

1 tax map -- of the old tax map it showed it parallel to
2 the bottom line and I made sure they got their eight
3 acres and that's how I established the line being
4 between 1 and 2.

5 Q. And did you find Lot 2 was being actually taxed by
6 the assessor's office?

7 A. Yes, Lot 2 had a tax number; it was being taxed.

8 Q. And that would be through all of the tax -- Lot 2
9 has been shown on all of the tax maps in some form or
10 other, is that right?

11 A. Yes, ma'am.

12 Q. All right, I don't have any further questions.

13 BY MR. MIKELL:

14 Q. Not to beat a dead horse because you said it about
15 four or five times, you did not find a subdivision plat
16 for Ed Capers Plantation anywhere?

17 A. No, sir I did not.

18 Q. And yet you found a 1954 tax map that shows lots
19 that are numbered on it?

20 A. That's correct.

21 Q. And subsequent tax maps that show lots on it?

22 A. Yes, sir.

23 Q. And you found deeds and you have identified four
24 of them, Lots 1, 2, 3 and 4?
25

1 A. Yes.

2 Q. Do any of those deeds have any information on them
3 about the width of those four lots that you looked at?

4 A. No, sir.

5 Q. Do any of those four deeds have anything on them
6 about the length of the four lots?

7 A. No sir.

8 Q. Do any of them -- do you see on the documents that
9 you are looking at right there, I don't know if it has
10 been identified into evidence or not, but it is A. O.
11 Christiansen 8097 document has a slew down through the
12 middle of it there. Would that indicate to you that
13 there is some salt water marsh area in those lots?
14

15 A. Yes sir.

16 Q. Do the four deeds that you looked at tell you if
17 the acreage that's referred to in them include that
18 slew or exclude that slew?
19

20 A. No, sir.

21 Q. So you really didn't have any way to determine
22 where the boundary lines were on any of these lots, did
23 you?

24 A. The only way I could determine is by the chain of
25 title on all of the adjacent properties that had
records on them like plats like 3 and 4. Then I had

1 these sketches and then I had land area. Acreage is a
2 very viable tool, but no I did not have dimensions. I
3 did not have any -- but that's the information I had to
4 work with.

5 Q. And when you found the documents that you found
6 like that 8097, I think we need to mark it by the way
7 and put it into evidence.

8 MS. EVERSOLE: Plaintiff's Number 7
9 then.

10 COURT: Let's pause for a moment
11 and make it Plaintiff's 7 without
12 objection I assume.

13 (WHEREUPON PLAINTIFF'S
14 EXHIBIT NUMBER 7 WAS
15 MARKED AND ENTERED INTO
16 EVIDENCE).

17 BY MR. MIKELL:

18 Q. Looking at that now Exhibit Number 7 it's got
19 discrepancies on it, doesn't it? For example, the
20 first Lot 1 is really two lots, right?

21 A. I believe so even though they only call Lot 1 as
22 an eight acre parcel.
23
24
25

1 Q. Right, but look on the other side of the road over
2 there, it says 385 feet on the lot -- I can't read it,
3 I'm upside down, 13 over there?

4 A. Yes, sir.

5 Q. All right, it is 385 feet on the street side so it
6 would reasonably be 385 feet on the other side. If you
7 calculate that out, you are going to come up with
8 sixteen acres, aren't you?

9 A. It should be big yes.

10 Q. Okay, so there's some confusion there?

11 A. Yes.

12 Q. And if you look at Mr. Christiansen's plat
13 attached to Exhibit Number 6, and he had a number
14 system, that is Plat Number F26664, right?

15 A. Yes, sir.

16 Q. And it is the one that has printed down there 8
17 Bron Cuthbert under Lot Number 3, doesn't it?

18 A. Yes, sir.

19 Q. Is that correct? Do you think that is correct?

20 A. I don't know. It is correct by matching this plat
21 to this plat. It is correct. I mean that is Cuthbert
22 on this plat.

23 Q. But it is kind of confusing, isn't it?

24 A. Yes, sir.

1 Q. This whole thing to say the least is confusing,
2 isn't it?

3 A. It is confusing when we can't find the plat by --
4 I think it is Daniel Appleton if there ever was a plat.

5 Q. Okay. Did you find a drawing by a Mr. Arthur
6 Christiansen T236?

7 A. No, sir. I don't think I did.

8 Q. Did you ever see a fellow named Ben Daise out
9 there on the land?

10 A. I met a couple of people. I don't remember their
11 names, but I did meet a couple of people out there.

12 Q. But you can't tell me if you --

13 A. No, sir.

14 Q. If you met Ben Daise? How about a Samuel Daise?

15 Did you ever see him out on the land?

16 A. I just don't remember the names. It is two and a
17 half years ago now.

18 Q. How about an Anna Daise? Did you see her out
19 there?

20 A. I met a whole family. There was a bunch of people
21 out there and they were all family.

22 Q. This gentlemen over here with the white shirt with
23 the stripes on it, did you see him out there?

24 A. I think he was out there.

1 Q. Okay. Have you ever seen a marriage certificate
2 between Samuel Daise and a Dale Smith?

3 A. No, sir.

4 Q. Have you ever seen an adoption decree for James
5 Smith?

6 MS. EVERSOLE: Objection to this
7 line of questioning.

8 MR. MIKELL: He said he examined
9 the records.

10 MS. EVERSOLE: It is irrelevant to
11 survey.

12 COURT: Well he is an expert on
13 survey but I think he testified that
14 he's examined the records, so I will
15 allow it for purpose.

16 A. No, sir.

17 BY MR. MIKELL:

18 Q. And when was the first time you recall going out
19 to the site?

20 A. It was in January -- about two years ago '09.

21 Q. Did you find any natural lines on the ground that
22 would help you distinguish the boundary lines between
23 plots 1, 2 and 3?
24
25

1 A. Well you had of course the river on one side. You
2 had a ditch and apparent line of occupation on the
3 northeast side. You had a road on one side and in
4 between the one on the south you had just some wood
5 lines.

6 Q. Okay. To help better understand what you just
7 said, you said there was a ditch and that would be
8 between Lots 3 and 4?

9 A. That's between Lots 2 and 3.

10 Q. 2 and 3, I'm sorry, between 2 and 3. The north
11 side of Lot 2 and the southern side of Lot 3.
12

13 COURT: Can we refer to your plat
14 when you are talking about this just so
15 I can --

16 MR. MIKELL: That's good.

17 COURT: So now we are on
18 Plaintiff's 2.
19

20 BY MR. MIKELL:

21 Q. So the ditch is where I'm indicating right along
22 here as I understand it?

23 A. Yes, sir. It is along the northeast side.

24 Q. Maybe we should let you put a green line there.
25 And that's a manmade ditch?

A. Yes, sir.

1 Q. Now on the southern side of that lot that you
2 surveyed there, is there any kind of natural barrier
3 there?

4 A. No, sir there was woods. A wood line.

5 Q. Is there any kind of manmade line there?

6 A. I didn't see any.

7 Q. Fence line, nothing like that?

8 A. I don't recall it.

9 Q. Well if we go back to the distance here from this
10 corner which is the northeast corner of the lot that
11 you surveyed down to the Ed Sanders line, it is about
12 387 feet if I am correct. Is that right?
13

14 A. Yes, sir.

15 Q. Why did you make this lot that you surveyed only
16 138 feet instead of half of the distance to the Ed
17 Sanders line?

18 A. Okay, in surveying we are taught -- let's say we
19 have got 16 acre tract and we have got simultaneous
20 conveyances, the northern half goes to one person, the
21 southern half goes to another person. We are taught in
22 surveying school that you take the bearing of the top,
23 the bearing of the bottom average, slide down, split
24 the lot exactly in half. That's not the case here.
25 Because we got a tax deed that reversed her tax map.

1 We got lots that are talked about. We got some
2 evidence there should have been a line there. My job
3 is to retrace that line. Follow the original steps.
4 Here's what makes this difficult, we don't even know if
5 there were ever original steps. So, based on the tax
6 map that line was pretty much parallel with the
7 southern line for Lot 1. And that's what I stated
8 here, that's how I held that line.

9 Q. And so what I understand from what you just said
10 is that your basis of putting the dividing line between
11 Lots 1 and 2 was what you saw on the tax map.

12 A. Basically yes, sir because of the tax deed and the
13 dimension of it.

14 Q. Are the tax maps surveyed?

15 A. No, sir.

16 Q. Are they correct in terms of surveying?

17 A. Sometimes they are all we got. And we have used
18 them as evidence and we have used them as all we got.
19 But no, I don't like to rely on them.

20 Q. Wouldn't a fair thing to have done would have been
21 to draw a line -- to do the perimeter of the totality
22 of Lots 1 and 2 and draw a line down the middle?

23 A. Well we did do a perimeter on all of it and when I
24 was doing this on the ground, I advised my clients this
25

1 line is the line I am worried about because we are
2 having to make assumptions based on evidence that we
3 really -- you know that's all we have and that's how I
4 did it. I made sure this guy got everything he got and
5 he's got more frontage and that's the reason I advised
6 my client then you want to go quiet this and clean this
7 up.

8 Q. And when you say more frontage, they got the other
9 lot, Lot 1 got more road frontage, right?
10

11 A. Yes, sir.

12 Q. But in doing that that way, they got less road
13 frontage then?

14 A. Yes, sir. It is about fifty feet either way.

15 Q. Okay. Thank you, I don't have any further
16 questions.

17 BY MS. EVERSOLE:

18 Q. Explain why you sometimes have to rely on tax
19 maps.
20

21 A. When the tax assessor -- you know sometimes you
22 got to wonder, how did they draw this line. Sometimes
23 there is an old file that Ms. Darby used to keep in her
24 office and she would keep her own personal files and
25 they would get on record and never got recorded. We

1 looked there. But we have to rely on something to get
2 the ball started.

3 Q. Okay. Did you note or see any improvements on the
4 property when you were there?

5 A. No.

6 Q. Did you see any signs of husbandry?

7 A. No.

8 Q. Farming?

9 A. No, ma'am.

10 Q. Timbering?

11 A. The front part was up when I was there, so --

12 Q. But essentially the same --

13 A. Yes, ma'am.

14 Q. All right I don't have any further questions,
15 thank you.

16
17 COURT: Just a quick question,
18 the 858 that's to hook everything in the
19 box here.

20 A. Yes, sir.

21 COURT: And then you subdivided it
22 here into the 398 high and 3199 here and
23 then the marsh. Where's this power
24 line, where does that go? You just saw
25 it going across.

1 A. I documented what was going
2 across her property.

3 COURT: Okay and the whole home
4 site, can you describe that?

5 A. We were taken there by one of
6 the owners and said this is the area
7 that the house is at and you really
8 couldn't tell much.

9
10 COURT: Wasn't on a foundation?

11 A. I don't remember seeing one.

12 COURT: The power line itself that
13 was in existence I guess when you were
14 out there.

15 A. That's in existence and it
16 appears to be serving this property over
17 here.

18
19 MR. MIKELL: Say that again.

20 A. It appears when it comes up
21 and goes across there it must be serving
22 someone over here.

23 COURT: Do you have anything else,
24 any questions based on that.

25 MS. EVERSOLE: No. Thank you.

1 COURT: Thank you very much. Is
2 there any reason to keep Mr. Gasque
3 here?

4 MS. EVERSOLE: I am not sure so I
5 would like to keep him.

6 COURT: Call your next witness.

7 JAMES B. SMITH, called as a
8 witness, after being duly sworn,
9 testified as follows:
10

11 BY MS. EVERSOLE:

12 Q. What is your full name?

13 A. James B. Smith.

14 Q. Are you known by any other names?

15 A. Bobby Daise.

16 Q. Why were you known as Bobby Daise?

17 A. That's the name Samuel Daise raised me.

18 Q. Samuel Daise raised you?

19 A. Yes.

20 Q. How did you get the name James Smith?

21 A. When I was in the military I had to give my birth
22 certificate and that's my mother's name James.
23

24 Q. Okay, you said you were raised by Samuel Daise?

25 Who is Samuel Daise?

A. That's my uncle.

1 Q. Your uncle?

2 A. Uh huh.

3 Q. You were raised by your uncle?

4 A. Yes.

5 Q. Okay were you ever adopted by your uncle?

6 A. Yes.

7 Q. How do you know that?

8 A. He said it. He told my mother and she said it.
9

10 MR. MIKELL: Your Honor, there's
11 something called the Deadman's Statute
12 here.

13 COURT: Hold on one second. What
14 was the objection as to the testimony of
15 his uncle? Is that what we are getting
16 into here? Based on that testimony,
17 will it benefit Mr. Smith?
18

19 MR. MIKELL: Yes, sir.

20 COURT: How is that?

21 MS. EVERSOLE: I think that this
22 particular defendant doesn't have
23 standing to object to this. He doesn't
24 have an interest as to whether Mr. Smith
25 is adopted or he is not adopted and it
is not an issue for them to challenge.

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He's not -- the Chaplains have no substantial interest in the outcome of whether Mr. Smith is adopted or if he is not.

MR. MIKELL: I am sorry, Your Honor, but that's the whole basis of this lawsuit. The lawsuit is that this man is the heir of Benjamin Daise is if this adoption is valid and he is most definitely -- that is the central issue of the case.

MS. EVERSOLE: I disagree in that the Chaplains don't claim to be heirs so they don't have standing to challenge whether he is adopted or he is not.

MR. MIKELL: Sure they are.

MS. EVERSOLE: They are not -- they have asserted no defenses whatsoever that they are heirs of Ben Daise.

COURT: Well I will tell you what I am going to do. I will allow him -- subject to disallowing it at some point based on how it all shakes out. So we will go ahead and put it on the record

1 subject to Mr. Mikell's objection and
2 see what we can figure out. So the
3 objection is the Deadman's Statute as to
4 the adoption testimony that we are about
5 to hear from Mr. Smith. Is that
6 correct?

7 MR. MIKELL: Yes, sir.

8 COURT: You can proceed subject to
9 that objection.
10

11 BY MS. EVERSOLE:

12 Q. You were raised -- you said that you were raised
13 by Samuel Daise?

14 A. Samuel Daise and Ann Daise.

15 Q. How old were you when you went to live with Samuel
16 Daise?

17 A. I was born there.

18 Q. You were born on the property?

19 A. Correct.
20

21 Q. And what property was that?

22 A. Samuel Daise property.

23 Q. Is it the property that we are talking about here
24 today in this lawsuit?

25 A. Correct.

Q. Okay, how old are you?

1 A. Now?
2 Q. Yes..
3 A. 74.
4 Q. Seventy-four. Okay and you said that your mother
5 left. When did your mother leave?
6 A. She leave after she married to William Gray.
7 Q. Okay and when was that?
8 A. I can't think of the year. I don't remember the
9 year.
10 Q. Okay, how old were you when that happened?
11 A. I was either eight or nine.
12 Q. Eight or nine years old?
13 A. Yes.
14 Q. And so Samuel Daise raised you since -- well since
15 you were born or since --
16 A. Yes, since I was born. That's where I was born.
17 My mother was living there too because that's our
18 uncle. She was living there and that's where I was
19 born and raised since I was old enough to go on my own.
20 Q. Is it your belief that you were adopted?
21 A. Huh?
22 Q. Is it your belief that you were adopted?
23 A. Yes.
24 Q. Do you know -- well who was Ben Daise?
25

1 A. He is the father of Samuel Daise.
2 Q. Okay, did Samuel have a wife?
3 A. Yes, Anna Daise.
4 Q. Did she also raise you?
5 A. Yes, she raised me. We lived in the house there.
6 He died, then she raised me on up until I was ready to
7 leave.
8 Q. Okay and was it still on this Lot 2 on the
9 property that we are here about today?
10 A. Lot 2?
11 Q. The property that we are in this litigation about
12 today?
13 A. Yes.
14 Q. Okay, was there a house on that property?
15 A. Yes, there were two houses on it. There was the
16 old man's house and then Samuel Daise's house. Both
17 houses on our land.
18 Q. What do you mean old man's house?
19 A. I mean his Daddy.
20 Q. You mean Ben Daise?
21 A. Ben Daise.
22 Q. Okay, his house was on there. Did you ever meet
23 Ben Daise?
24 A. No, I never meet him.
25

1 Q. Was he alive when you were young or no?
2 A. No, he wasn't alive. I didn't know him. Samuel
3 Daise I knew.
4 Q. Did Samuel Daise have other children?
5 A. Yes, he had three.
6 Q. Okay and what are their names?
7 A. One is Georgie and one is Manny and Marie.
8 Q. Okay, so Georgie, Manny and Marie.
9 A. Yes.
10 Q. Are they alive today?
11 A. No.
12 Q. When did Manny pass away?
13 A. He passed away -- I know he died after Ben. I
14 don't remember what year.
15 Q. All right, did Manny have a wife?
16 A. No, none of them were married.
17 Q. None of them were married?
18 A. The only one that was married was Marie.
19 Q. Okay.
20 A. The girl.
21 Q. So did Manny or Georgie then have any children?
22 A. No.
23 Q. Did Marie have any children?
24 A. Yes. She had two.
25

1 Q. Okay and who were they?
2 A. They were Rose and Charlie.
3 Q. And are they living?
4 A. No.
5 Q. Do you know when they passed away?
6 A. Passed away -- I don't remember when they passed
7 away.
8 Q. And Marie you said passed away?
9 A. Yes.
10 Q. Do you know when she passed away?
11 A. She passed away -- early 80's.
12 Q. In 80's?
13 A. Somewhere around there.
14 Q. And her husband? Did he pass away before her?
15 A. Yes.
16 Q. So are you the only heir that is surviving -- well
17 let me ask you this. Do you know if Ben Daise had any
18 other children?
19 A. No, I don't know. Samuel Daise is the only one I
20 know.
21 Q. Okay, all right now who has lived on this property
22 over the course of all the years?
23 A. Lived on it?
24 Q. Yes. Who has lived on it?
25

1 A. Over five years?

2 Q. No. Over the course of all the years. You lived

3 on it?

4 A. I lived on it.

5 Q. You lived on it until you were how old?

6 A. I lived on it until I was -- I lived on it until I

7 moved. I was living there when I married and we were

8 living there.

9 Q. Okay, when did you marry?

10 A. 1960.

11 Q. 1960? Okay. Did Marie live on the property?

12 A. Yeah, she lived on there too.

13 Q. How long did she live on the property?

14 A. She lived there -- I know she lived on there. She

15 and her husband built a home on their property, on the

16 other property.

17 Q. So who paid the taxes on the property over the

18 years?

19 A. Me.

20 Q. Since when? Tell me about how you paid the taxes.

21 A. Well I paid.

22 Q. You paid the taxes on the property?

23 A. On the property.

24

25

1 Q. Since when? When did you start paying the taxes
2 on the property?

3 A. First off me and Marie was paying it together.

4 Q. You and who?

5 A. Marie.

6 Q. Okay, Marie. You were paying it together.

7 A. I ended up paying it. Then after she moved, she
8 turned it over to me.

9 Q. How did you go about doing that?

10 A. She went down to the courthouse and changed it.
11 She put my name on the bottom of it -- I don't know put
12 my name.
13

14 Q. Okay. All right there was a house on the
15 property. The house is not there today. What happened
16 to the house?

17 A. I pulled it down.

18 Q. You pulled it down?

19 A. Yeah, I pulled it down.
20

21 Q. When did you do that?

22 A. I did that in '64. '64 I think.

23 Q. And why?

24 A. To keep from paying taxes on it. I had to pay tax
25 on the house and nobody living in it.

Q. Okay, but when did that happen?

1 A. 1964.

2 Q. You think it happened in '64?

3 A. That's when I -- I - say that again?

4 Q. I am trying to figure out when the house was
5 actually torn down and taken off the tax rolls.

6 A. In '64.

7 Q. You think it was '64? Okay. Now did you convey
8 title, sign a deed conveying title to the property to
9 anyone?

10 A. It was signed it to me.

11 Q. No, no. You signed a deed.

12 A. Yes.

13 Q. I am going to show you Exhibit -- Plaintiff's
14 Exhibit 1A. Did you sign that deed? The deed from you
15 to Patricia -- Lucille Patricia Smith?

16 A. Correct.

17 Q. Okay, you signed that deed for the property? So
18 you conveyed title to the property to Patricia?

19 A. Correct.

20 Q. And when was that? Well it says on the deed here.
21 The deed says December 3 of 1999. Is that right?

22 A. Yes.

23 Q. Why did you convey the property to your daughter?

1 A. Because I wanted her to have it. I bought my
2 home.

3 Q. You bought your own property. And where is your -
4 - where do you live?

5 A. Hidden Hollows.

6 Q. How close to Lot 2 -- the property that we are
7 here today about, how close is it to your house?

8 A. About a half a mile.

9 Q. Right down the street?

10 A. Right down the street from it.

11 Q. Okay, do you go by this lot every day or just
12 about every day?

13 A. Not every day but I used to go by there often.

14 Q. Okay. What did you do with the property over the
15 years?

16 A. Farmed it.

17 Q. You farmed it?

18 A. Right.

19 Q. What did you grow?

20 A. First of all I used to --

21
22
23 MR. MIKELL: Your Honor, I am going
24 to have to object here. There is no
25 allegation of adverse possession here.
The whole basis of the claim by the

1 Plaintiffs is that this gentleman is the
2 heir of the previous owner. There is no
3 allegation of adverse possession here.
4 We are getting into testimony about
5 adverse possession.

6 COURT: Well I will allow it
7 because we got plats and aerial photos
8 and it may be interesting at some point
9 so go ahead.
10

11 BY MS. EVERSOLE:

12 Q. What's on the property now?

13 A. Trees, trees.

14 Q. Has anyone improved the property or is it
15 improved?

16 A. No.

17 Q. Have you let anyone farm the property?

18 A. No.

19 Q. The Chaplains here are the Defendants in this case
20 and they are claiming they have title to this property.

21 Have you had any experiences with the Chaplains?

22 A. No.

23 Q. None whatsoever?

24 A. No.

25 Q. Did anything happen in 2009?

1 A. I remember one time -- and I planted some potatoes
2 on that land, but he never planted it.

3 Q. Okay, did anything else happen after that?

4 A. After that?

5 Q. Did anybody try to cut any timber down?

6 A. Oh yeah, he claimed that I sold his brother
7 whatever for cleaning up the land and we went down
8 there and he said he cleaned it up for his brother.
9 His brother buy the land and I said I don't think so.

10 Q. You said that he said he bought the land?

11 A. His brother told me he bought it.

12 Q. Oh, okay.

13 A. But he was talking about when he bought it from --
14 I went over there and I was telling him I said he
15 couldn't no longer plant the land because -- he said he
16 bought that land.

17 Q. Did you ask him who he bought it from or who he
18 claims to have bought it from?

19 A. He said he bought it from Cuthbert.

20 Q. Okay.

21 A. But I said he couldn't bought that land. He
22 bought the next - the next parcel not Samuel Daise
23 land. I said he couldn't have bought Samuel's land
24 because it belongs to me.
25

1 Q. Okay, all right. All right, I don't have any
2 other questions at this time. If you would answer any
3 questions for Mr. Mikell please.

4 BY MR. MIKELL:

5 Q. How long have you lived at your current address?

6 A. How long have I lived --

7 Q. At your current address.

8 A. Since '74. Twenty-four years.

9
10 MR. MIKELL: Your Honor, in view of
11 his hearing, may I move around?

12 COURT: Yes, please. Watch those
13 wires.

14 BY MR. MIKELL:

15 Q. Is there anything -- I see you wear glasses. Do
16 you have regular vision with your glasses?

17 A. Yeah, but I can't hardly see too good.

18 Q. You can't see too good?

19 A. No.

20
21 Q. How long has it been like that that you haven't
22 been able to see too good?

23 A. It has been since I have been a diabetic.

24 Q. So but when did that start?

25 A. It started in the '60's.

1 Q. In the '60's, so you have had vision problems
2 since in the '60's?

3 A. Yes.

4 Q. Can you see via glasses, reading glasses? I've
5 got reading glasses too. Can you see somebody or can
6 you see a car?

7 A. Can I see a car?

8 Q. Yeah, right now. If there was a car driving in
9 the street out there, could you see it?

10 A. Yes.

11 Q. And could you see somebody riding on a tractor?

12 A. Tractor?

13 Q. Yes, sir.

14 A. Yes.

15 Q. You could. Okay. Now when was it that you were
16 adopted? I am reserving my objection, Your Honor, but
17 since we got into that. When was it that you were
18 adopted by Mr. Davis?

19 A. In '37. That's when I was born.

20 Q. Yes, sir. But did you go up to the County
21 courthouse?

22 A. Up to the County courthouse?

23 Q. Yes, sir, to get adopted?

1 A. I think he died before I went up there but I know
2 he adopted me by mouth.

3 Q. He adopted you by mouth? Okay.

4 A. Yes.

5 Q. You remember signing an Affidavit?

6 A. Huh?

7 Q. An Affidavit, a document where you signed for your
8 lawyer to give me some information?

9 A. Yes.

10 Q. Is that your Affidavit?

11 A. Yes.

12 Q. I want you to look at it and all right I want to
13 introduce this.
14

15 (WHEREUPON DEFENDANT'S EXHIBIT
16 NUMBER 1 WAS MARKED AND
17 ENTERED INTO EVIDENCE).
18

19 BY MR. MIKELL:

20 Q. Okay and now you say you did not go to the
21 courthouse for Mr. Daise, Samuel Daise to adopt you?

22 A. I was born there and he adopted me right there.

23 Q. Yes, sir. Do you have a document from a Court
24 issued someplace that says that Mr. Samuel Daise
25 adopted you?

A. No.

1 Q. Okay. In fact you gave a copy of your birth
2 certificate to your lawyer, is that right? Is this
3 your birth certificate?

4 A. Yes.

5 Q. All right sir. I would like to introduce this
6 into evidence.

7 COURT: All right, Defendant's 2
8 without objection?

9 MS. EVERSOLE: I am sorry, what was
10 that? Oh, birth certificate.

11
12 (WHEREUPON DEFENDANT'S
13 EXHIBIT NUMBER 2 WAS
14 MARKED AND ENTERED INTO
15 EVIDENCE).

16 BY MR. MIKELL:

17 Q. Does it say on this birth certificate that Samuel
18 Daise is your father?

19 A. He wasn't the only father I knowed.
20

21 Q. That's not my question, sir. My question is does
22 your birth certificate that you are now holding say on
23 there that Samuel Daise was your father? Who's the
24 father's named on your birth certificate?

25 A. I don't have a father on there.

Q. It says none.

1 A. Yes.
2 Q. Okay and how about the mother?
3 A. Adele.
4 Q. Adele Smith, correct?
5 A. Yes.
6 Q. Okay and was Adele Smith Samuel Daise's wife?
7 A. No, that's the uncle. That's my mother's uncle.
8 Samuel Daise is her uncle.
9 Q. And how was he your mother's uncle? Draw me the
10 family tree there.
11 A. Sister -- brothers. His sister, I don't know.
12 Q. You don't know?
13 A. I know he was uncle to two of them.
14 Q. So that would have made Samuel Daise your great
15 uncle?
16 A. I mean --
17 Q. But somehow there was some relationship between
18 your mother and Samuel Daise?
19 A. Relation?
20 Q. Family relationship.
21 A. My mother's uncle.
22 Q. Okay. What was the name of the husband of Marie
23 Daise Middleton?
24 A. Marsa. I just called her Marsa Middleton.
25

1 Q. I am sorry, I am not understanding your word.
2 A. Marsa.
3 Q. Spell it for me.
4 A. Her right name was James Middleton.
5 Q. All right, that's what I was looking for. James
6 Middleton. And when did he pass away?
7 A. He must have passed away in '54 or '55.
8 Q. If you don't remember that's fine, but you are
9 saying about '54 or '55?
10 A. '54 or '55.
11 Q. Now what about Rose? Did Rose ever marry?
12 A. No, none of them ever married.
13 Q. Did she have any children?
14 A. I don't know.
15 Q. Okay, now when was the last time you ever raised
16 any crops on this land? You said that you tore the
17 house down in 1964. When was the last time you raised
18 any crops there?
19 A. The last thing I planted on there was corn. 2001?
20 I think it was 2001.
21 Q. And how much corn did you plant?
22 A. There was two acres.
23 Q. About two acres, okay. So there was two acres
24 cleared in farm land now?
25

1 A. Correct.

2 Q. What did you do with this two acres of corn?

3 A. Fed it to the hogs.

4 Q. So this was kind of for your personal use then? I
5 am sorry I didn't get your answer.

6 A. What?

7 Q. The corn that you raised was for your personal
8 use?

9 A. Correct.

10 Q. If you were adopted by Samuel Daise, why do you go
11 by the name James Smith?
12

13 A. Because that's the way they had it in the
14 courthouse under my mother -- my mother is Smith. But
15 everybody knows me by Bobby Daise.

16 Q. Well but that's kind of like a nickname. Lots of
17 people have nicknames isn't, it?
18

19 A. Well that's when everybody recorded Bobby Daise.

20 Q. I mean Herman Ruth they called Babe Ruth. But
21 Babe wasn't his real name, was it?

22 A. I don't know.

23 Q. Did you ever have the property surveyed before Mr.
24 Gasque did it in 2009?

25 A. No, I never had it.

1 Q. Do you know of anybody that ever had it surveyed
2 before 2009?
3 A. No.
4 Q. When did Samuel Daise die?
5 A. He died in '35 something like that, I don't know.
6 Q. Well your Affidavit says 1942, is that right?
7 A. Yeah.
8 Q. Your Affidavit that you signed says 1942? Right
9 up at the top here.
10 A. Yes that is --
11 Q. And Anna Daise died, his wife, died in 1949. Is
12 that correct?
13 A. '49?
14 Q. That's what the Affidavit says, I don't know.
15 A. I am not sure. I don't remember that.
16 Q. You don't remember?
17 A. No.
18 Q. Were both of them living in Beaufort, County when
19 they passed away?
20 A. Yes.
21 Q. How about Manny Daise? Where was he living when
22 he died?
23 A. Philadelphia.
24 Q. I'm sorry?
25

1 A. Philadelphia.

2 Q. Philadelphia. How about Marie Middleton? Where
3 was she when she died?

4 A. Columbia.

5 Q. South Carolina?

6 A. Yes.

7 Q. And how about George Daise? Where was he when he
8 died?

9 A. He died there too.

10 Q. Philadelphia, okay. How about Rose Middleton?
11

12 A. Savannah.

13 Q. And Charlie Middleton?

14 A. Savannah.

15 Q. So if the house was pulled down in 1964 then
16 nobody's been living there since that time; that would
17 be about 45 years ago. Is that right?

18 A. 45?
19

20 Q. Whatever it is from 2011 to 1964.

21 A. Yes.

22 Q. And therefore none of the heirs of Benjamin Daise
23 if there are any around were living there during that
24 time, were they?

25 A. No.

1 Q. Did you and Mr. Joe Cuthbert ever have any
2 problems about this land?

3 A. No.

4 Q. Thank you, sir.

5 BY MS. EVERSOLE:

6 Q. You go by the name of James D. Smith?

7 A. J.D. Smith.

8 Q. What does the D stand for?

9 A. Daise.

10 Q. Now that's not on your birth certificate?

11 A. No.

12 Q. Why do you use the D?

13 A. I use it as James Smith. I use the name, half of
14 the name I was born was Daise.

15 Q. So the name that you were raised by and then
16 what's on your birth certificate?

17 A. Not on the birth certificate.

18 Q. Why did you -- you mentioned in your original
19 testimony that you went into the Navy?

20 A. Army.

21 Q. Army. You went into the Army. Is that when you
22 had to start using the name Smith?

23 A. Smith, yes.

24 Q. And when was that? When did you go into the Army?

1 A. 1956.

2 Q. Okay and I would like to clarify too your current
3 address, where you are living right now? When did you
4 move into that address?

5 A. Where I living now?

6 Q. Where you are living now?

7 A. '64. 1964.

8 Q. Okay and before that is when you lived on the
9 other property?

10 A. The address then?

11 Q. No before you moved to your current address, you
12 lived on the other property that we are here about
13 today?

14 A. Correct.

15 Q. I don't have any more questions. Thank you.

16 COURT: Just a couple of quick
17 questions. Can you see up close, Mr.
18 Smith?

19 A. Yes.

20 COURT: I am handing the witness
21 Plaintiff's 1J. This is Sander's
22 property.

23 A. Right here.

1 COURT: Yes, sir. I am indicating
2 that - can you all see this? I am
3 indicating the plowed fields to the
4 south which I think were indicated by
5 Mr. Gasque as Sanders' property. Are
6 you oriented such that you know what you
7 are looking at here? This is an aerial
8 photo. Can you point out where the
9 property was that you are describing?
10 Where the property you describe as yours
11 that you deeded to your daughter is?
12 And again I have handed you I think
13 north -- well north is up and this is
14 the road and this is the Sanders'
15 property and that's the plowed fields.

16 A. For some reason I --

17 COURT: I know that is difficult to
18 see so if you can't see that one maybe I
19 will hand you another one that is
20 easier. This is the 1988 Plaintiff
21 Exhibit 1K which is another aerial
22 photo. This one may be easier. Well
23 let me ask you this Mr. Smith, what
24 boundaries do you recall. Obviously the
25

1 road was to the east. The water was to
2 the west. What about to the north and
3 south? What boundaries do you recall
4 when you were on the property, if any?

5 A. The north?

6 COURT: Well the north of course is
7 in this direction on the plat. North is
8 up on both of those and they are not
9 plats. They are aerial photographs.
10

11 A. They are not on that map.

12 COURT: No, sir. They are on
13 these. Well let me ask you a different
14 question. If you were living on the
15 property, how did you know where your
16 boundary lines were?

17 A. How did I know?

18 COURT: Yes, sir.

19 A. They were lined. They had
20 lined.
21

22 COURT: Was it physical? I mean
23 was there something on the property
24 either built, growing or otherwise. Say
25 for instance you had chosen one day to

1 clear your entire lot and you didn't
2 want to clear the adjacent lots.

3 A. Right.

4 COURT: How would you have known
5 where to stop clearing?

6 A. There would be a line or
7 wooded lines run --

8 COURT: Can you describe that? Was
9 it a ditch you say?
10

11 A. Yes.

12 COURT: And which side of the
13 property was that on?

14 A. The other side of the property
15 that it was on --

16 COURT: Let me make sure I
17 understand the Plaintiff's claim. They
18 don't -- Plaintiff doesn't claim to
19 adjoin the Sanders. The Plaintiff
20 claims to adjoin the other property, is
21 that correct?
22

23 MS. EVERSOLE: Yes, north along
24 one.

25 COURT: Okay. Of course what you
are looking at here is a black and white

1 aerial photo taken - it's upper right
2 hand corner the year.

3 A. Right hand corner?

4 COURT: The year this was taken is
5 here, 1988. The year this was taken and
6 the one you have in your lap is 1978.
7 Again an aerial photograph. I don't
8 know if they use satellites or airplanes
9 to take those but anyways it is a
10 photograph from above.

11 MS. EVERSOLE: Are you done?

12 COURT: Yeah, that's all the
13 questions I had.

14 BY MS. EVERSOLE:

15 Q. Mr. Gasque said that there is a ditch. Do you
16 know anything about a ditch on the property? Is there
17 a ditch on the property?

18 A. I know there's a ditch.

19 BY MR. MIKELL:

20 Q. After you moved away they put a ditch in?

21 A. Right.

22 Q. The road that you drive down that you were asked
23 about where you live now is called David Green Road?

24 A. Yes, sir.

1 Q. Can you see that road from your house?

2 A. Yes, sir.

3 Q. Okay, thank you.

4 COURT: Any other questions on K
5 and J?

6 BY MS. EVERSOLE:

7 Q. Can you see this property from your house?

8 A. Yes.

9
10 COURT: Do you have any further
11 questions for Mr. Smith?

12 MR. MIKELL: No, sir.

13 MS. EVERSOLE: No, Your Honor.

14 PATRICIA SMITH, called as a
15 witness, after being duly sworn,
16 testified as follows:

17 BY MS. EVERSOLE:

18 Q. Ms. Smith, what is your full name?

19 A. Miss Patricia Smith.

20 Q. And how old are you?

21 A. Fifty-two.

22 Q. Where do you reside?

23 A. In Irmo, South Carolina.

24 Q. And how long have you lived there?

1 A. I have lived in the Columbia area, been there
2 since about '83.

3 Q. And what is your occupation?

4 A. Administrator.

5 Q. Who do you work for?

6 A. I work for the Department of the Army.

7 Q. Where were you born and raised?

8 A. I was born on St. Helena Island, South Carolina
9 and I was raised there. Left when I went to go to
10 college.

11 Q. Raised where on St. Helena Island?

12 A. I was raised on this particular property at least
13 until I was about six years old.

14 Q. Okay, do you remember being on the property?

15 A. Yes, I do.

16 Q. What do you remember about it?

17 A. I remember that it was a big rambling old house
18 with lots of room with marsh on the back side of it.
19 Lots of trees, pomegranate, persimmons in the front
20 yard, very shady. And I remember living there with my
21 parents, Marie Middleton, who I called Aunt Marie and
22 at least two of my sisters and brothers.
23

24 Q. Okay and when were you, you said you were about
25 six, what year was that back then?

1 A. Probably '64.

2 Q. And that's about when you moved away then?

3 A. Yes, we moved to the house where my parents
4 currently reside, 27 Dave Green Road.

5 Q. And how often do you visit home?

6 A. I mean I lived on St. Helena until I was 17 or 18
7 when I went to college and went off to work after that
8 and I would visit home probably on an average every
9 three months but more if something was going on.

10 Q. What do you know about the family history of the
11 Daise's, your father and this relationship that we have
12 been talking about here today?

13 A. Well I know that Marie Middleton I considered my
14 aunt and I called her Aunt Marie. She and my father
15 were very close. She didn't have -- I guess by the
16 time I had sense I am not ever aware of her having
17 children so he was -- I mean they were very close and
18 she would come to our house from the old site every --
19 you know once in a while and visit and then even after
20 she moved away to be with her husband which was still
21 just down the road, she would visit us every once in a
22 while. And we would visit her too.

23 Q. Okay, so after you all moved off of the property
24 what was done with the property to your recollection?
25

1 A. Marie Middleton still lived there with her
2 husband. And Mr. Marsa he lived in the house with us
3 too.

4 Q. Okay and that was until about when?

5 A. '64.

6 Q. Okay, so you would visit every three months or so
7 and the place that you would visit would be your folks?

8 A. Right, 27 David Green Road.

9 Q. Okay, could you see this property that we are here
10 today about on a regular basis?

11 A. Yes, it's right down the street.

12 Q. Okay, did you ever see anybody other than your
13 family plant the property?

14 A. No.

15 Q. Was there any husbandry going on on that property?

16 A. No there was nothing going on on that property.

17 The first I ever heard that anybody else had planted on
18 that property was when this action started and I heard
19 that the Chaplains were saying that. That's the first
20 time I had ever heard or seen them.

21 Q. Is that why you had the survey done?

22 A. I had the survey done because in early January my
23 father -- I had a conversation with my father on the
24 phone and he said Howard Chaplain is clearing part of
25

1 your land and I said oh, he is? And so, I said well,
2 you probably need to go talk to him and see what's
3 going on and so he told me that he did and that Howard
4 Chaplain was saying that he owned the land and I said
5 well maybe he misunderstood or something so I told my
6 Daddy, go back and talk to him again and tell him and
7 explain that you know it's your land, it's always been
8 your land and you have given it to me. And he went
9 back and I think saw him again and the answer was the
10 same, that Chaplain was saying that this is his land.
11 I said well Daddy we need to do something and so I
12 contacted Mr. Gasque and asked him to survey it so that
13 we could clarify what was going on.
14

15 Q. Now can you identify -- look at the aerial and can
16 you identify on any one of the aerials or all of them
17 where the property is located that we are talking about
18 here today?
19

20 A. Lot 2 I believe is the -- 64 David Green Road. I
21 believe this is it here.

22 Q. Okay and the house that you lived in, do you know
23 -- can you sort of give us an idea of where it was?

24 A. It was towards the back of the property and the
25 reason I know that is because I can remember the marsh
and the little palmetto trees and I can remember Marie

1 using them for well like when my sister was ill with
2 fever she would go and get these things in the back so
3 it was like up in the woods.

4 Q. Up in the woods.

5 A. It wasn't close to the front of the property.

6 Q. When you were growing up did you have any belief
7 about who your family ancestry was?

8 A. How do you mean?

9 Q. I mean who was Samuel Daise to you?

10 A. Of course he died before I was born, but my
11 understanding was that Samuel Daise and his wife Anna
12 who they called Minnie raised and adopted my father. I
13 mean that was my understanding and that he stayed
14 there. His mother, my grandmother, Adele, I am not
15 sure how long she lived after she moved away, but I
16 mean that was my understanding that they raised him and
17 took care of him and that's where he stayed.
18

19 Q. Okay, I don't have any other questions at the
20 moment.
21

22 BY MR. MIKELL:

23 Q. Let me do the math here, your birthdate would be
24 about 1959?

25 A. '58.

Q. I was giving you the benefit of the doubt.

1 A. That's okay.

2 Q. So then you would not have ever known Samuel Daise
3 or his wife Anna Daise?

4 A. No, I have only heard their names.

5 Q. Do you have or have you ever seen a marriage
6 certificate between Samuel Daise and an Adele Smith?

7 A. No.

8 Q. Do you have or have you ever seen an adoption
9 certificate issued by a Court stating that Samuel Daise
10 adopted James Smith?

11 A. No.

12 Q. Did you ever plant anything on this lot to you
13 personally yourself?

14 A. No.

15 Q. Did you ever hire anybody to plant anything on it?

16 A. No, it's vacant. It stood vacant since my Dad --
17 since he stopped planting it and stopped raising the
18 hogs. He didn't have any corn anymore.

19 Q. Sitting on your Dad's porch if somebody drives
20 down David Green Road, you can see the car?

21 A. Oh, yes. It's the country so when a car goes by
22 and it is a small community so if something strange
23 goes by like a tractor or a car that's not part of the
24 community, you see it and you pay attention.
25

1 Q. Okay, thank you.

2 COURT: Anything else?

3 BY MS. EVERSOLE:

4 Q. Do you think you could point out your father's
5 house on one of those maps?

6 A. It's probably about here.

7 Q. Right on the road?

8 A. I mean the property's address is 64 and our
9 address is 27.

10 COURT: Just one quick question.

11 You have owned the property by deed
12 since '99. You said -- how often do you
13 come down here. You live in Columbia.

14 MS. SMITH: Uh huh.

15 COURT: And you come down how
16 often, I am sorry?

17 MS. SMITH: Probably back then
18 about every -- I would say on the
19 average every three months but my
20 parents were ill you know starting
21 around 2002 so probably I came more
22 often then because one of them may have
23 been in the hospital or doctor's
24 appointments or things like that.
25

1 COURT: Okay, and how often do you
2 actually visit the property when you are
3 down?

4 MS. SMITH: I can like see it.
5 Probably every couple of months or so.

6 COURT: When you are there or you
7 have been there, how do you know where
8 the boundaries are on the property?
9

10 MS. SMITH: Well you know I was
11 listening to my father's testimony about
12 that, he had a -- there was a tree --
13 there was something that he could look
14 at and I always thought this was like,
15 how do you know; but he knew because of
16 the trees that were there where the left
17 side of that property was and where the
18 right side of it was.
19

20 COURT: Now you are orienting from
21 the road left and right?

22 MS. SMITH: Yes from the road
23 facing the property. But he's pointed
24 and I believe he may have even pointed
25 it out to Mr. Gasque or one of his
workers when they were first surveying

1 the property as to where he thought the
2 lines were based on growing up there and
3 being the caretaker and the person that
4 owned that property since he was living
5 there.

6 COURT: Now looking at the aerials,
7 there is a slew along the road.

8 MS. SMITH: When you all say slew
9 can you point that out to me.

10 COURT: A shallow creek is my
11 definition of a slew. I don't know what
12 anyone else's is I could be in trouble
13 here with a wrong definition but is
14 there a water feature that bisects the
15 property and if so, can you describe it?
16

17 MS. SMITH: The only thing I know
18 about is the ditch that's on the right
19 when you are facing the property and
20 then there's marsh and stuff towards the
21 back.
22

23 COURT: And to access the stuff
24 near the back, I mean if you could
25 describe in your words the whole
property?

1 MS. SMITH: Well it's pretty, I
2 mean it is wooded. It is overgrown
3 except for the part that the Chaplains
4 cleaned out in 2009 when all this
5 started.

6 COURT: And where is that? I don't
7 think I ever got --

8 MS. SMITH: It is pretty close to
9 the road.

10 COURT: I mean is it shown on any
11 of these maps?

12 MS. SMITH: I don't think so. I
13 think these aerial maps are all predated
14 to 2009. Well when you are walking
15 through the woods and then you cross a -
16 - I don't know maybe that is the slew
17 that you are talking about. It is like
18 a boggy, muddy area and then you go
19 across and then there's dry land again.
20 And I walked with Mr. Gasque.

21 COURT: I don't have any more
22 questions. Does anyone have any more
23 questions?
24
25

MS. EVERSOLE: No.

1 COURT: Thank you very much.

2 MS. EVERSOLE: Plaintiff rests.

3 COURT: All right. Question is do
4 we --

5 MR. MIKELL: I would like to make a
6 directed verdict motion on the issue of
7 the parentage of Mr. Smith. The law in
8 this state is very clear that in 1942
9 the person had to be -- a male child
10 that was born out of wedlock did not
11 inherit and that's not retroactive and I
12 have got some cases on that law. I
13 suspect you have been through this issue
14 before.
15

16 MS. EVERSOLE: Well I have several
17 remarks to that. First is, I believe
18 that the Chaplains again lack standing
19 to challenge whether Mr. Smith is
20 adopted. They lack sufficient statement
21 of the outcome of the issue and they
22 have no real, substantial or material
23 interest in this matter. They are not
24 claiming by their Answer that they are
25 heirs of Ben Daise. Ben Daise is by all

1 documents the owner of Lot -- the
2 original owner of Lot 2 and so they lack
3 standing to challenge whether Mr. Smith
4 is adopted or not. There is a doctrine
5 and in addition to that I think I put
6 this on the record, I believe that the
7 Circuit Court may lack subject matter
8 jurisdiction to hear a determination as
9 to whether someone's adopted or if they
10 are not. I mean that's exclusive
11 jurisdiction of the Family Court and
12 Probate Court.
13

14 COURT: That's an interesting
15 question and actually I came up with
16 another case that you are all aware of
17 and it seems undetermined I guess by the
18 latest thing out of the Court as
19 actually Mr. Mikell has pointed out on
20 another case. But if that's the case
21 doesn't it mean we stop right here and
22 send that portion to the Probate Court?
23

24 MS. EVERSOLE: Uh.

25 MR. MIKELL: This is an action to
determine the title to the land.

1 MS. EVERSOLE: Yeah, it is a quiet
2 title action. It is not a matter of
3 adopted. It is not -- the issue has not
4 been raised and they lack the standing
5 in order to challenge that.

6 COURT: I guess my thought is this.
7 They claimed ownership of a portion or
8 all of the same property that they are
9 talking about here. And so I think
10 that probably would get them standing in
11 that kind of test.

12 MS. EVERSOLE: I think it depends
13 on how they are claiming it, Your Honor.

14 COURT: And I haven't heard their
15 case yet, but --

16 MS. EVERSOLE: I also --

17 MR. MIKELL: Do you want to take a
18 recess and go over the cases?

19 COURT: Well my thought is this, I
20 am going to try and get what I can get
21 on the record today and then we will
22 hash out some of that later because they
23 are very interesting questions.
24
25

1 MS. EVERSOLE: I do have one more
2 comment to make about it as well and
3 that would be under the doctrine of
4 adoption by estoppel or an equitable
5 adoption, according to American Juris
6 Prudence this is Juris Prudence
7 published in 1962 that I got this from.
8 In some cases adoption is defined as the
9 taking into one's family of the child of
10 another as son or daughter and heir and
11 conferring it on a title to the rights
12 and privileges of such or as the taking
13 of the child of another into one's
14 family and treating it as one's own.
15 Under Subsection 8 American Juris
16 Prudence says "However a valid contract
17 for adoption although not consummated
18 and given legal effect by adoption
19 proceedings during the lifetime of the
20 adopting parent, may upon the later step
21 be enforced to the extent of decreeing
22 of the child occupying the status of an
23 adopted child in equity entitled to the
24 rights of inheritance from the foster
25

1 parents where circumstances require such
2 relief as a matter of justice. And so I
3 think those doctrines are applicable.

4 MR. MIKELL: This exact factual
5 situation has been --

6 MS. EVERSOLE: May I make my
7 argument?

8 MR. MIKELL: I am sorry.

9 COURT: I thought you were finished
10 as well. I am sorry. Go ahead.

11 MS. EVERSOLE: It goes on to say in
12 Subparagraph 16 while there is some
13 difference of opinion, most Courts which
14 have considered the effect of an
15 agreement to adopt - hold to adopt --
16 hold that in agreement clear and
17 complete in its terms entered into by
18 the parties capable of contracting which
19 has been fully and faithfully performed
20 on the part of the child so that the
21 relief is required as a matter of
22 justice and equity will be enforced in
23 equity to the extent of decreeing that
24 the child occupying in equity the status
25

1 of an adopted child and be entitled to
2 the same rights of inheritance in
3 testate property of the promisor to
4 which he would have otherwise been
5 entitled and have the intended adoption
6 proceedings been legal and consummated
7 and that makes reference in the case of
8 Roberts vs. Roberts and a bunch of other
9 cases here. Roberts vs. Roberts at 22
10 App 775 an Alabama case. Alexander v.
11 Lamar a Georgia case at 273 SE 2nd 656
12 and others. So I would argue that in
13 this case an equitable adoption would be
14 applicable.
15

16 COURT: Thank you Ms. EVERSOLE.

17 MR. MIKELL: This exact factual
18 situation has been litigated in South
19 Carolina on the case of Pinckney vs.
20 Warren, 344 S.C. 382, 544 SE 2nd 620 in
21 which the Court held without hesitation
22 that all the testimony in the world
23 about who lived where and who said what
24 was inconclusive and the facts here are
25 inconclusive and it is not comfortable

1 to have to delve into all this but the
2 man's birth certificate says without
3 question and his own testimony is that
4 Mr. Samuel Daise was his uncle and
5 therefore he is not a child of that man
6 and this case says in no uncertain terms
7 that he does not inherit on that land.

8 MS. EVERSOLE: Okay then under that
9 theory I will take it a step further.
10 The testimony is that Samuel Daise was
11 his uncle and there are no other
12 surviving heirs and so by lineage Samuel
13 Daise being his uncle he would take and
14 inherit the property through an
15 intestacy.
16

17 MR. MIKELL: There's no proof of
18 all of that.
19

20 MS. EVERSOLE: The whole testimony
21 is that.

22 COURT: Doesn't that get into your
23 argument that perhaps the Probate Court
24 would be the appropriate place to -- if
25 that's the issue. Again, I don't know.

1 MS. EVERSOLE: Well the Circuit
2 Court can determine that. Regardless of
3 the adoption, the Circuit Court can
4 determine by the witnesses whether he is
5 an heir by lineage or not, regardless of
6 the adoption.

7 COURT: And I guess the question
8 is, I don't know the answer to this.
9 Assume for the moment that that were the
10 case that I said that we throw out the
11 issue of adoption and he is the only
12 remaining heir of his uncle, do we have
13 all of the parties named and served that
14 would be required to be here? I don't
15 know. I haven't cross-referenced yet.

16 MR. MIKELL: There's some more
17 evidence that hasn't been brought in yet
18 on this issue.

19 COURT: Interesting. Okay, I am
20 going to read this.

21 MS. EVERSOLE: I think there has
22 been all the heirs that would have been
23 noticed, has been noticed via
24 publication.
25

1 MR. MIKELL: I would also offer you
2 a case of Wilson vs. Jones which is on
3 the same issue where it says that even
4 though we have a statute that is not
5 retroactive.

6 COURT: What is the date of that
7 statute?

8 MR. MIKELL: I believe that the
9 first time it came up was in '77.
10

11 MS. EVERSOLE: I would also like to
12 point out that these cases deal with
13 illegitimate children as opposed to
14 adopted children and there is a
15 distinction. An illegitimate child is
16 one that was born to a person out of
17 wedlock. That is not the same here. So
18 I would argue that these cases are not
19 relevant to this.
20

21 COURT: I will take a look at them
22 at some point, not right now while we
23 have everyone here because it would be
24 pretty boring to watch me read.
25

MS. EVERSOLE: And I have more.

1 COURT: So I will take the Motion
2 under advisement. So the question is do
3 we have a witness that can fit in before
4 we take a break or -- so go ahead and
5 call your first witness.

6 HOWARD CHAPLAIN, JR., called
7 as a witness, after being duly
8 sworn, testified as follows:
9

10 BY MR. MIKELL:

11 Q. Give us your name please.

12 A. Howard Chaplain, Jr.

13 Q. And where do you reside?

14 A. Route 255, Story Tell Road, Goose Creek, South
15 Carolina.

16 Q. Mr. Chaplain, you are going to have to speak up a
17 little bit so this lady here can hear you.

18 A. That's Route 255, Story Tell Road, Goose Creek,
19 South Carolina.
20

21 Q. And how old are you?

22 A. Sixty-six.

23 Q. And where were you born?

24 A. Goose Creek in the same area. Story Tell Road
25 254. I live on 255.

1 Q. And obviously we are here today to talk about this
2 parcel of land down in Ed Capers Plantation. Tell me
3 about how you first came to be aware of the fact that
4 this property was for sale.

5 A. Well I saw the sign. St. Helena Real Estate had
6 it up for sale at once and Cuthbert was a friend of
7 mine but his son came and told me about the property.
8 Well he came to my store and he started talking about a
9 property -- interested in property because he was going
10 to get rid of it.

11 Q. Did Mr. Cuthbert or his son show you the property?
12

13 A. Right. Mr. Cuthbert went up there and laid out
14 the property to me.

15 Q. What did he show you?

16 A. Well if you are familiar with that area, there is
17 a little road that go right in there. Like the other
18 side of the ditch like you are coming from David Green
19 side there is a little road in there. There was no
20 ditch in there before that. The County put a ditch in
21 there about 15 years later I guess. When we started
22 talking about the land that was '96.

23 Q. 1996 was when you started?
24

25 A. Right, we started on it and there was an original
road right there.

1 Q. All right, this road that you are talking about,
2 is that where the County ditch is now located?

3 A. Right.

4 Q. All right.

5 A. It came inside of it with the ditch because the
6 road is still right there. The ditch ran right along
7 the corner like of the back side.

8 Q. And did he tell you how far south the property
9 went?

10 A. He said it went down to the creek. There is marsh
11 land back there. Lots of water front.

12 Q. Okay, well that's west. How about south?

13 A. Well that's what he said. He walked down to the
14 far end. His son had a fence up there on the far end
15 and it came across the creek like this. That was the
16 back side. And a gate up to the front. So Samuel had
17 his gate a little over the property.
18

19 Q. So it went to Sanders?
20

21 A. Excuse me?

22 Q. He told you it went to Sanders?

23 A. Sanders up to the ditch.

24 Q. Okay, now when did you begin occupying the
25 property?

1 A. '97 because that's when my daughter asked about
2 the property and was going to build a house there.
3 They cut off an acre. First they wanted an acre on the
4 back on the marsh side but my son-in-law couldn't get
5 back there because they had a berm built back there so
6 they switched it and came up to the front and that's
7 when I started cleaning off in '97.

8 Q. '97?

9 A. Right.

10 Q. And so you and your wife both, whatever you
11 thought was the property there, up to the Sanders line
12 in '97?
13

14 A. Right.

15 Q. And is this the deed that you got from Mr.
16 Chaplain -- I mean Mr. Cuthbert?
17

18 A. Yes, \$68,000.00.

19 MS. EVERSOLE: Can I see? No
20 objections. Wouldn't that be
21 Defendant's Number?

22 MR. MIKELL: 3 I think.

23 (WHEREUPON DEFENDANT'S EXHIBIT
24 NUMBER 3 WAS MARKED AND
25 ENTERED INTO EVIDENCE).

1 BY MR. MIKELL:

2 Q. Now did you have a survey -- I am sorry let her
3 finish. Did you have a survey made of the property at
4 the time that you bought it or around that time?

5 A. It seemed like someone had another lien on the
6 property, right. So my wife did a lot of the
7 transaction on that and we got a survey of the land.

8 Q. Is this the survey you had made?

9 A. Right and this is the first lot --

10 Q. Wait a minute. Let's identify it and then --

11
12 MS. EVERSOLE: I don't have any
13 objection on that.

14 (WHEREUPON DEFENDANT'S EXHIBIT
15 NUMBER 4 WAS MARKED AND
16 ENTERED INTO EVIDENCE).
17

18 BY MR. MIKELL:

19 Q. Now tell me after you had it surveyed, when you
20 first went in to use and occupation of the property?

21 A. Right after --

22 MS. EVERSOLE: I would object on
23 assuming facts not on evidence. He
24 hasn't established use or occupation
25 yet.

BY MR. MIKELL:

1 Q. Did you ever use the property?

2 A. That's when I started using the property in '97.

3 Q. All right and what did you do?

4 A. I planted all the soil area right in there come
5 behind us to the light pole going all the way back to
6 the river and go down to Sanders. Sanders had an old
7 house out there, across the ditch and this is where the
8 light -- These survey his house that go across a
9

10 little marsh, Sanders property he had a big house back
11 in the back. This is where -- I cleared from this side
12 right here and all working on the base at the time and
13 they had some palm trees. Got palm trees. I planted
14 this section. I had this whole section cleaned up. I
15 came all the way back to this point back here, cleaned
16 all that part right in there; cleaned all that out. He
17 had it planted in '97, '98, '99. 2009 I went back up
18 there and this was a little road right there. When I
19 came back to plant they had a little something across
20 it like that.
21

22 Q. Okay, we are going to get to that.

23 A. Okay.

24 Q. Let's go back to the beginning. When you first
25 went out there and started occupying the property,
maybe we should get you because you were pointing there

1 to take this green thing and draw on there the area you
2 said you cleared.

3 A. This is where the light bared off right in there.

4 Q. All right, that's a light pole?

5 A. Light pole right there.

6 Q. Okay.

7 A. I was just above that. This came along all the
8 road somewhere right in there.

9 Q. Well draw it on there.

10 A. Okay. I go back there in the creek. Somebody
11 dumped a lot of trash back through there.

12 Q. Okay, now when you say you cleared it. Tell me
13 how you cleared it.

14 A. Well I had to use my backhoe first. Dig up all
15 these trees out there, leveled them off good. I went
16 back there with my tractor and cultivated.

17 Q. So you cleared it with a tractor?

18 A. No, with a backhoe first.

19 Q. A backhoe first and then a tractor?

20 A. I had to get all these big trees and stuff out of
21 there.

22 Q. Right.

1 A. After I got it to where I can cultivate it, get
2 all the stumps and stuff out there, I used like a rake
3 to rake all that, you know.

4 Q. Okay and did you -- when you did that, did you
5 take your tractor home and your back hoe every night?

6 A. Every night, yes.

7 Q. So you would drive it up and down David Green Road
8 every night?

9 A. Right.

10 Q. And every morning when you were going back down
11 there?

12 A. Right.

13 Q. Did you have anybody to help you do that?

14 A. Well little Ron. I sent my brother back up there
15 because I waited a year or so and he went and brushed
16 it up for me and take his cutter up there and cut it up
17 there good. Back in '98 somewhere along there.

18 Q. Okay and --

19 A. 2008.

20 Q. Okay, did your brother have the --

21 A. My tractor.

22 Q. Your tractor when he was doing that?

23 A. Right.

1 Q. Okay. Now excuse me, once you got it cleared did
2 you do anything with it?

3 A. I planted on it for about a year or two and then I
4 planted some sweet potatoes and I think the guys went
5 over there -- somebody went over and starting digging
6 up my potatoes so I quit planting. I just keep it kind
7 of cultivated and keep it kind of leveled off.

8 Q. What did you do with the sweet potatoes that you
9 grew out there that couple of years?

10 A. Well I did pretty good. I had a little grocery
11 store so I sold them there.

12 Q. You have a grocery store there where Story Tell
13 Road and is that Peaches Hill Road coming out?

14 A. That Peaches Hill Road, no that's not Peaches Hill
15 Road.

16 Q. Whatever it is there are two roads, paved roads
17 that come together and you got a store right there at
18 the corner?

19 A. Right next to the church.

20 Q. Church, right. Okay, and you were selling the
21 potatoes out of the store there?

22 A. Right. I still do.
23
24
25

1 Q. Okay and this is activity that you carried on
2 growing those potatoes out there for a couple of years
3 you say?

4 A. Right.

5 Q. And did you have to have the tractor to do that?

6 A. Oh, yeah, you gotta have a tractor.

7 Q. I'm sorry?

8 A. Yes, sir.

9 Q. And how long is the growing season?

10 A. Well usually 90 days - about 100 days to get
11 everything out there.

12 Q. And so in addition to the clearing which took some
13 time with the tractor going back and forth, now you got
14 your tractor going back and forth up and down David
15 Green Road on a regular basis, cultivating the crop is
16 that right?
17

18 A. Right.
19

20 MS. EVERSOLE: I am going to object
21 to leading question.

22 COURT: Try not to lead.

23 MR. MIKELL: Yes, sir.

24 BY MR. MIKELL:

25 Q. During this time from 1997 well let's finish out -
when was the first time that Mr. Smith or Ms. Smith,

1 Lucille Smith here contacted you about your going on
2 this property?

3 A. She never did.

4 Q. She never did. Okay --

5 A. 2009 Smith came by the store and asked me if I had
6 a title to my land and I said, sure I have a title. My
7 title showed me that that's where the line stopped at
8 and started at. I didn't show him the title but we had
9 a conversation and that was it. And that was the last
10 time and when I went back there again I saw a little --

11 Q. Is there a point in time in which you identified
12 when Mr. Smith came to see you?

13 A. In August. I was sitting in his truck.

14 Q. Yes, sir but I am thinking about the time frame.
15 Did something happen right after that that made you
16 identify when that time took place?

17 A. No, right after he saw my brother out there the
18 last time finished cultivating because we were getting
19 ready to put another crop in there and about a month
20 later he came up to the store and parked right in the
21 front and I walked out there and stood beside him and
22 he told me.

23 Q. How long after Mr. Smith came to see you did you
24 come to see me?

1 A. No more than about -- well I came to see you after
2 I went back up there and the road was blocked off.
3 Maybe a month after or something like that. Not too
4 much after that.

5 Q. And that was in 2009?

6 A. Yes, 2009.

7 Q. And all those years going back to 1997 when you
8 were out there clearing the land and after that you
9 were growing these potatoes for a couple of years --
10

11 MS. EVERSOLE: I object to the
12 characterization of these questions. He
13 is leading.

14 COURT: Well he said some of this,
15 so I am -- you know it is not a jury
16 matter. Go ahead.

17 BY MR. MIKELL:

18 Q. Did Mr. Smith say anything to you about your
19 driving that tractor on his land?
20

21 A. No.

22 Q. Did he say anything to you about any fact that you
23 were out there clearing the land or plowing it or
24 anything?

25 A. No.

1 Q. Did you see him as you were riding by up and down
2 the road on the tractor during those times?

3 A. I see him every day because he used to come to the
4 store regular often.

5 Q. Now you said something earlier about some pine
6 trees. Tell me about the pine trees.

7 A. Up on the opposite side of the light pole I
8 cleared the part because it wasn't good to plant anyhow
9 and I put me some pine trees there on this part where I
10 cleared up on the back side because I knew they weren't
11 going all the way back to the back right there.
12

13 Q. You planted some pine trees?

14 A. Yes.

15 Q. Is that what I am understanding you to say?

16 A. Yes. I planted in '88.

17 Q. Where did you get -- I am sorry I didn't quite
18 understand that.

19 A. I was working on the base in '88 and they planted
20 some pine and they had some extra and I just got me
21 some on Hunter Air Force Base back then and I was just
22 starting there and I had access to some of the pine.
23

24 Q. And when was this?

25 A. '88.

Q. '88?

1 A. Yes. That's when I went and I hunted back there.
2 Q. All right, but when did you plant the pine trees
3 on this property here is what we are talking about?
4 A. I meant I hunted on '88 and the pine was right at
5 the same time '97, '98 something right in that time
6 after I cleaned that up.
7 Q. All right, where did you get the pine trees that
8 you planted on this Lot 2?
9 A. From Hunter. I started working over there in '88.
10 Q. I see, all right now I am clear. You started
11 working at Hunter in '88?
12 A. Right.
13 Q. Okay, but you didn't get the pine trees from them
14 until '98?
15 A. Right.
16 Q. Okay, now I am clear. Did you ever see Benjamin
17 Daise on the land?
18 A. I don't know Benjamin Daise.
19 Q. Did you ever see Samuel Daise on the land?
20 A. No.
21 Q. Did you ever see Mr. Smith over here -- James
22 Smith on the land?
23 A. Not since I started over there.
24
25

1 Q. Did you ever see Patricia -- Lucille Patricia
2 Smith on the land?

3 A. No.

4 Q. When you were clearing the land did you do it all
5 by yourself?

6 A. The first time I did it all by myself. Because I
7 had a backhoe I was a little younger and so I dug all
8 that up and come back and cultivated it and come back
9 and grade it. That was pretty good.
10

11 Q. At any point in time after when you said you
12 started, you did it by yourself, at any point in time
13 after that did you have help?

14 A. Yes, because like I said I planted some potatoes
15 up there for a couple of years and I skipped a year --
16 but it don't take but one year to let it grow back up
17 and I sent my brother up there. He cultivated it for
18 me.
19

20 Q. Did anybody help you other than your brother?

21 A. My son came home and he did a little bit but I
22 helped. But he did some.

23 Q. So there were several people going back and forth
24 down David Green Road to this property?

25 A. Right.

1 MR. MIKELL: Are you getting
2 confused?

3 MS. EVERSOLE: This is - I am not
4 the only one that gets confused

5 COURT: Go ahead and hold on one
6 second. Let's let him answer.

7 BY MS. EVERSOLE:

8 Q. You got title to the property in what year?

9 A. I am quite sure that was in 1977.

10 Q. You have a piece of paper saying 1977?

11 A. No, ma'am.

12
13 COURT: No, ma'am you can't do
14 that. Sorry you have to lead if you do
15 that.

16 A. 1978.

17 Q. Where's the deed for that?

18 A. My wife has it or she should have the deeds to the
19 property. We have the deed and everything on the
20 property.
21

22 Q. Did you see the deed here today?

23 A. Yes, he just showed me.

24 Q. And that's the deed we are talking about,
25 Defendant's Exhibit Number 3?

A. Yes.

1 Q. And this is where you got title to the property?
2 A. Right.
3 Q. Correct.
4 A. Right.
5 Q. What year was that? What's on that deed?
6 A. My eyeglass is kind of bleary. I am trying to
7 look at a date.
8 Q. Well I will help you here. Turn to Page 2 that
9 would be the date on it right here. What date? Do you
10 need a magnifying glass?
11 A. I don't see a date.
12 Q. Would that be helpful to you?
13 A. I am trying to find the date.
14 Q. Well let's try right here. Does that say the 16th?
15 A. 16th day of April --
16 Q. April, 1997. Is that right?
17 A. 97.
18 Q. So that is when you got this deed is 1997?
19 A. Right.
20 Q. You said that Mr. Cuthbert showed you the property
21 -- where the property was that you purchasing by this
22 deed right?
23 A. Prior to.
24 Q. Prior to you getting this before.
25

1 A. Yes.

2 Q. When did he show you the property?

3 A. We started about in 1966, '67 about a year before.

4 Q. So you are claiming that you had this property
5 since --

6 A. No, I didn't start it. He showed me the property
7 and then we went into some -- I think my wife had some
8 problems she had to get quiet title on it or something.

9 Someone had a lien on it. She thought someone had a
10 ~~lien on it but it was different or something like that.~~
11

12 Q. Lien on what property?

13 A. On this property right here. Well we got it
14 straightened out and then we went on from there.

15 Q. Okay, when you walked the property with Mr.
16 Cuthbert, did he make any representations to you as to
17 how many acres were on it?

18 A. He said eight acres or more. He said it was more
19 than eight acres.

20 Q. He said eight acres or more?

21 A. More than eight acres.

22 Q. And on what did he base that he had more than
23 eight acres?
24

25 A. I guess it was his all time experience I guess, I
don't know. This is what he lay out to me.

1 Q. How do you know that this is what he laid out to
2 you? How do you know that? What we are referring to
3 is Defendant's Exhibit Number 4 and it is a plat
4 prepared by Mr. Pennington I believe.

5 A. See there is a road right here and a stone right
6 there.

7 Q. A what there?

8 A. A stone.

9 Q. All right, a stone was there.

10 A. And this went on right on the side of this fence
11 line, ditch line.

12 Q. Sanders ditch line is right here?

13 A. Right.

14 Q. Right, Sanders ditch line is right here?

15 A. Right.

16 Q. And then there is a stone right over here and
17 that's eight acres. Is that what your testimony?
18

19 A. No.

20 Q. That's what you are testifying to?

21 A. No. He said there was more than eight acres in
22 there. That was his word, more than eight acres.
23

24 Q. Okay, let's go up to the deed is what controls.

25 How many acres is on your deed?

A. The deed says eight acres.

1 Q. Okay, so you got eight acres. And you just
2 testified that there is a stone here and that Sanders
3 is over here, right?

4 A. Right.

5 Q. Okay and that is eight acres this way?

6 A. No when we had it surveyed, the surveyor told us
7 it was more than eight acres and that's what Cuthbert
8 told me, more than eight acres. But then when --

9 Q. How much more than eight acres?

10 A. If I look at this piece and I look at my nine
11 acres that I own, it looks like less than 16 acres to
12 me.

13 Q. So you are going from eight acres -- you are
14 saying that's 16 acres?

15 A. No, I didn't say that. I am not a professional on
16 that deal.

17 Q. Okay, so you admit that you have eight acres? And
18 that your boundary is on -- bounded by Ed Sanders, is
19 that correct? Is that what you believe?

20 A. Well, yes.

21 Q. Okay. Ed Sanders is to the south of your property
22 and you own eight acres next to Ed Sanders, correct?

23 A. I am claiming all this.

1 Q. Well what we need to go by is what's on the land
2 out there and you are telling me you are bounded by Ed
3 Sanders on the south, right? And you own eight acres,
4 correct?

5 A. That's on your plat.

6 Q. I am not talking about the plat. What you know is
7 that you are bounded on the south by Ed Sanders?

8 A. Right.

9 Q. Okay. Now the property that you believed is
10 yours, bounded on the south by Ed Sanders, what years
11 did you plant on the property? Name the years that you
12 planted.
13

14 A. I have got -I planted it in 2000, 2001, 2002
15 because I had -- that's the time my son-in-law done
16 changed his mind about building. He had men come out
17 there and was going to build on it and he got
18 transferred some place.
19

20 Q. Okay, so he didn't build. You never lived on the
21 property?

22 A. Who?

23 Q. You.

24 A. No.

25 Q. Your son has never lived on the property?

A. No.

1 Q. Your brother has never lived on the property?
2 A. No.
3 Q. No one lived on the property?
4 A. No.
5 Q. You never put up a fence?
6 A. No.
7 Q. You didn't have any animals on the property? You
8 didn't raise any animals on the property?
9 A. No.
10 Q. Okay so you planted in 2001 you say and 2002?
11 A. 2003.
12 Q. And 2003. Any other years that you claim?
13 A. No.
14 Q. Just those years?
15 A. I just planted four or five years and somehow I
16 drift off or omitted and let it grow back up and then
17 went back and cleaned it up good.
18 Q. And how many times did you do that -- do you claim
19 that you did that?
20 A. I had to do it at least three times a year to keep
21 the weeds out.
22 Q. So you are saying here today that you were there
23 three times a year for what years?
24
25

1 A. From the time I quit farming for three years. Up
2 until about -- well I never really quit because he went
3 back there and cultivated everything again.

4 Q. Who's he?

5 A. My brother.

6 Q. Were you there when he did that? Or claims to
7 have done that? Were you present?

8 A. Well yes I was because he break down out there and
9 I had to take some fuel out there to him.
10

11 Q. I am sorry, what? Say that again.

12 A. He break down out there and I had to take some
13 fuel out to him because he was using my equipment.

14 That's how I know he was out there doing it.

15 Q. And what year was that?

16 A. '88, '89.

17 Q. '88?

18 A. I mean 2009, 2008 something like that.
19

20 Q. 2009 so it's right before all this happened?

21 A. Right.

22 Q. All this litigation that was brought? Right
23 before that is when this happened?

24 A. Yes.

25 Q. Okay. You said that you planted vegetables on --
to sell at your store?

1 A. Right.

2 Q. Do you have other property that you plant on that
3 you sell at your store that is not near this property?

4 A. Yes.

5 Q. And you do that every year?

6 A. Right.

7 Q. I don't have any other questions.

8 COURT: Mr. Mikell?

9
10 MR. MIKELL: I have some but go
11 ahead.

12 COURT: I was looking at -- of
13 course I have seen the deed and Exhibit
14 3 and the plat indicates -- the plat of
15 7.02 acres and this is the plat that you
16 are -- that you say is your property?

17 MR. CHAPLAIN: Right.

18
19 COURT: And just to be clear the
20 Sanders' property is to your south, to
21 your left as you enter your property?

22 MR. CHAPLAIN: Right.

23 COURT: Your ownership is derived
24 from this deed which is well I have
25 forgotten the year '97 -- 1997 is that
correct?

1 MR. CHAPLAIN: Right.

2 COURT: Okay and you had mentioned
3 something about looking at the property
4 prior to '97 but if I understand your
5 testimony correctly that was just you
6 were looking at it?

7 MR. CHAPLAIN: '97. '97 -- 2007?

8 COURT: Well I was looking -- again
9 the question is for you sir -- from you.
10 I have been handed a deed that's
11 Defendant's Exhibit 3 that indicates
12 that you got this property from Mr.
13 Cuthbert I guess in '97, is that
14 correct?
15

16 MR. CHAPLAIN: Right.

17 COURT: Okay, but you had no
18 interest and I don't mean interest like
19 you are interested, you had no ownership
20 of the property prior to '97, is that
21 correct?
22

23 MR. CHAPLAIN: Like I said '96. In
24 '97 is when I started clearing the
25 property. I cleared it up to '99, 2009
because the reason I stopped whoever

1 came up there owned this property it was
2 cleared out. When I went back up there
3 to get ready to plant something, they
4 had a gate up there and the gate was
5 back there and they were putting up a
6 fence -- 2009 there was a fence so I
7 just walked back there and asked him
8 what he was doing and he said this is
9 their property according to what the
10 survey says so I just walked away and
11 that's when I contacted an attorney and
12 that was my last time on the property
13 2009.
14

15 COURT: I don't have any more
16 questions.
17

18 BY MR. MIKELL:

19 Q. I want to understand something to the -- you kept
20 talking about a stake that you and Mr. Cuthbert looked
21 at in a road. Am I correct that that's right here?

22 A. Right.

23 Q. On this plat?

24 A. Right.

25 Q. Is that the place where the County put the
drainage ditch in?

1 A. They put the drainage ditch just like this but it
2 wasn't to -- this point right where it started veering
3 off and went to the river.

4 Q. Okay, but it's basically in the same place where
5 the road was, is what I am trying to understand. Is
6 that right?

7 A. The ditch seemed like it came in the inside of the
8 marker.

9 Q. Okay, but it is right there by the marker?
10

11 A. Right there by the marker.

12 Q. Okay and Mr. Cuthbert told you that he owned
13 everything from that road and that marker down to the
14 Sanders' land?

15 A. Right here.

16 Q. Thank you.
17

18 MS. EVERSOLE: I don't have any
19 more questions.

20 DAVID YOUMANS, called as a
21 witness, after being duly sworn,
22 testified as follows:

23 BY MR. MIKELL:

24 Q. Your name, please.

25 A. David Youmans.

Q. Age?

1 A. Sixty-five.

2 Q. You are a registered surveyor in South Carolina?

3 A. I am, yes.

4 Q. For how long?

5 A. Since 1983.

6 Q. And do you belong to any professional
7 organizations?

8 A. I do. The State Society of Registered Land
9 Surveyors.

10 Q. And how long have you been a member?

11 A. Probably twenty years.

12 Q. What did you do before you were a registered
13 surveyor?

14 A. I was in the Army. Oh I worked at a surveying
15 company.

16 Q. For how long?

17 A. Twenty years thereabouts.

18 Q. So you have been in the business for how long now.
19 I forgot that.

20 A. About forty years.

21 Q. And how many surveys would you say you have
22 participated in in Beaufort County?

23 A. Thousands.

24 Q. Okay, I would like to offer him as an expert.

1 MS. EVERSOLE: I have no objection.

2 BY MR. MIKELL:

3 Q. Did you do a survey of the property that you are
4 looking at there on that lot for and get it unfolded
5 here? Did you do those two surveys?

6 A. I did, yes.

7 Q. And if I understand it, what they are really is a
8 comparison of a survey previously done by Mr.

9 Pennington and one done by Mr. Gasque that is overlaid
10 on the same property, is that right?
11

12 A. That's correct.

13 Q. I want to introduce these two.

14 MS. EVERSOLE: No objection.

15 (WHEREUPON DEFENDANT'S EXHIBIT

16 NUMBERS 5 AND 6 WERE MARKED

17 AND ENTERED INTO EVIDENCE).
18

19 BY MR. MIKELL:

20 Q. And in doing a survey you obviously do some
21 research, am I correct?

22 A. Yes, sir we do.

23 Q. And that research consists of looking at public
24 records and other things that might help you, is that
25 right?

A. Correct, yes, sir.

1 Q. And in that research did you find a drawing that
2 had been done by Mr. Arthur Christiansen designated
3 T236?

4 A. Yes, I did.

5 Q. And is that that document I just handed you?

6 A. It is.

7 MS. EVERSOLE: I have never seen
8 this document.

9
10 MR. MIKELL: Well it was in the
11 stuff that I gave you.

12 MS. EVERSOLE: We didn't get a copy
13 of anything. And that was not one of
14 them.

15 MR. MIKELL: I gave you all of
16 these.

17 MS. EVERSOLE: You gave me a list.
18 You never gave me the documents. I
19 never got that:
20

21 COURT: You want to take a second.

22 MS. EVERSOLE: Okay. I haven't seen
23 it but I don't object to it.

24 COURT: Is it offered as an
25 exhibit?

MR. MIKELL: Yes.

1 COURT: That would be 7 without
2 objection.

3 (WHEREUPON DEFENDANT'S EXHIBIT
4 NUMBER 7 WAS MARKED AND
5 ENTERED INTO EVIDENCE).

6 BY MR. MIKELL:

7 Q. Is that document a survey? That number 7?

8 A. No, it is not a survey. I would call it a sketch
9 and not a plat. It was Mr. Arthur Christiansen's
10 attempt at showing how the deeds all related in the Ed
11 Capers' plantation but it was not a physical survey.
12

13 Q. Mr. Arthur Christiansen was a surveyor here in
14 Beaufort previously?

15 A. Yes. He started in 1920 or '21 and surveyed up
16 through the '60s and a little bit into the '70s before
17 he finally retired.

18 Q. Does that document have a date on it?

19 A. Done in 1961.
20

21 Q. Okay, does that document -- does it have any
22 errors in it?

23 A. Several. For one there is no Lot 6 listed on
24 here. It was admitted. There is a Lot 6 because we
25 found a deed to it to a Joseph Smith. Lot 1 is shown
very large shown as eight acres but my belief is that

1 it is actually in the position where Lot 2 is and Lot 1
2 should be below that. Lot 2 that is listed should be
3 3, 3 as 4, 4 as 5 and 5 is Lot 6. The little narrow
4 road that is on the north side of Lot 3 is in fact
5 really on the lot on the north side of Lot 4 which kind
6 of substantiates the numbering error.

7 Q. Anything else?

8 A. That's all I was really concerned with is just
9 this one area.

10 Q. Did you find a survey of Ed Capers Plantation
11 wherever and whatever that might be?

12 A. No, sir I did not.

13 Q. All right and did you find a Neil Christiansen
14 plat F2664?

15 A. Yes, Lot 3 and 4, yes.

16 Q. I believe Mr. Gasque has already identified that
17 one. Let's introduce that one also.
18
19

20 MS. EVERSOLE: It is Plaintiff's

21 Exhibit Number --

22 MR. MIKELL: I think that is a blow
23 up. That would help us all with a
24 magnifying glass.
25

1 COURT: I am going to buy one of
2 those. It's a good thing to have.

3 Where do you get them?

4 MR. MIKELL: Staples.

5 (WHEREUPON DEFENDANT'S EXHIBIT
6 NUMBER 8 WAS MARKED AND
7 ENTERED INTO EVIDENCE).
8

9 BY MR. MIKELL:

10 Q. Did you find other than these two documents did
11 you find any other plat, survey, drawings, anything to
12 help you identify what might have been the first five
13 blocks of this Ed Capers Plantation?

14 A. No, that was the only surveys I had. I found the
15 survey of the Sanders tract down below Ed Capers or
16 south of Ed Capers but I didn't find any others in the
17 first few lots of Ed Capers Plantation.
18

19 Q. Okay, now if you look at T236 there which is the
20 first dated document that we have that might help us
21 understand something about this Ed Capers Plantation,
22 does it have bearings and distances on it or survey
23 lines?

24 A. No survey lines. It has some dimensions on the
25 frontage of the lots on the east side of the road that

1 runs through the middle of it. That's the only
2 indication of any sizes.

3 Q. Okay.

4 A. There is a couple of bearings on the upper road.

5 Q. And that's a good ways north of the lots we are
6 dealing with down here?

7 A. Yes.

8 Q. Now where it has Lot 1 does it have a name?
9

10 A. Right... It has A. D. Cuthbert -- that is Abraham
11 Cuthbert.

12 Q. And how about 2?

13 A. Ben Daise.

14 Q. And 3?

15 A. William Daise.

16 Q. But I think you said already that one of those
17 lots was actually two lots, is that right?

18 A. Correct.
19

20 Q. And explain that to us.

21 A. Lot 1 says it is eight acres by Abraham Cuthbert.
22 When in effect when we went and did the survey from Ed
23 Capers property -- or Ed Sanders property, excuse me,
24 we went up northward to -- we went to the line of
25 Defendant's Exhibit Number 8 a southern line of Lot 3
surveyed by Christiansen which defined the area that

1 would encompass Lots 1 and 2. That total acreage on
2 that was a little over 16 acres from the total acreage
3 of that parcel led me to believe also that that was
4 Lots 1 and 2 where Mr. Christiansen -- excuse me, where
5 Mr. Christiansen has Lot Number 1 shown. Lot 2 should
6 be 3 because that is Ben Daise.

7 Q. Okay, well look at Exhibit Number 8 below the
8 southern boundary line of Lot 3, does it have Lot 1?
9

10 A. It does.

11 Q. And it says Abraham Cuthbert down there?

12 A. It does which reflects on the Arthur Christiansen
13 sketch.

14 Q. So Neils Christiansen and this Exhibit Number 8
15 just omitted Lot 2 I guess or what happened there?

16 A. Evidently. I am not sure how he came up with what
17 he did.

18 Q. Okay in looking at all of these documents is there
19 any way to tell us where the boundary lines are of Lot
20 1 and Lot 2?
21

22 A. Individually?

23 Q. Yes, sir.

24 A. No. The best we could do was to find the
25 aggregate of Lots 1 and 2 from the Sanders property up
to Mr. Daise property at Lot 3.

1 Q. Okay, Mr. Pennington took a shot at it by
2 surveying Lot 2 and then Mr. Gasque took a shot at it
3 by surveying Lot 2 if I understand what you overlaid on
4 these plats?

5 A. Right. Except that Mr. Pennington calls it Lot 1
6 this is a dash line on our overlay plat here. This
7 represents his plat that he did. Same thing on this
8 one. This represents -- the dash line represents the
9 plat -- Mr. Gasque did of Lot 2. Mr. Gasque called his
10 Lot 2. Mr. Pennington called his Lot 1.

11 Q. But it's the same lot on the ground?

12 A. The Gasque and the Pennington?

13 Q. Yes.

14 A. No, it is not.

15 Q. I don't mean by number. I mean they were
16 attempting to survey the same parcel of land?

17 A. I would imagine, yes.

18 Q. Okay. Does it show up better to color code the
19 thing like this?

20 A. I am not sure what the orange line represents?

21 Q. That's the Gasque survey.

22 A. No. Gasque -- you are right. I am sorry. It is.

23 Q. The yellow one is the Pennington?

24 A. The Pennington, thank you.

1 Q. Is that right?

2 A. Correct.

3 Q. And in that manner you can see how they differed?

4 A. Correct.

5 Q. Okay. Is there anything that you found that would
6 give credence to either line by either of them?

7 A. Not really. I think if we were to survey to do
8 the plat of either Lot 1 or 2 we would do the same
9 thing we did, we would find the total of Lots 1 and 2
10 and then split it. Probably holding the road frontage,
11 splitting that and then making the acreage equal all
12 the way to the back, disregarding this slew that runs
13 up in here because that was never a consideration on
14 any of the old plats. They always went out to -- I am
15 assuming mean high water but that wasn't even strictly
16 adhered to either. It would be a line of convenience
17 normally.
18

19
20 Q. Did you find anything on the ground that would
21 have indicated why this orange line was chosen here or
22 why the yellow one was chosen either one?

23 A. No, we did not.

24 Q. Did you find any artificial marks or fences or
25 anything else that would be manmade that would cause
one to use those lines?

1 A. There was a fence line there but it beared no
2 resemblance to either line. There was an old hedge
3 row, almost a line dam but it meandered so much that
4 that was really not a consideration either. At first I
5 thought we had an old line dam and then we went and
6 surveyed, located, plotted it out and then it was some
7 meandering line to separate - I don't know field from
8 woods or something. I have no idea.

9 Q. Is it fair to say that this is a rather confusing
10 area to survey?
11

12 A. It is one of the many on St. Helena Island.

13 Q. And these original deeds that you looked at were
14 back in the 1880's do you know if they considered
15 wetlands or can you tell if they considered the
16 wetlands like the slew in the middle of the property
17 when they were calculating acreage back in those days?

18 A. No. No regard for that whatsoever.
19

20 Q. Thank you sir, I don't have any more questions.

21 COURT: Take a five minute break
22 before we start on any testimony of
23 anybody for a minute and then let's just
24 take a five or ten minute lunch break
25 and then we will get rolling again.

1 MR. MIKELL: A five or ten minute
2 lunch break, is that what you said?

3 COURT: No, no, just a quick. We
4 have been going since 9:30 or 10:00 or
5 something, right. So let's take a quick
6 break.

7 MR. MIKELL: I have some questions
8 for Mr. Youmans about this last document
9 which is not in evidence which is color
10 coded with orange and yellow outline and
11 he tells me that my assumption is not
12 correct or at least that's what I am
13 beginning to understand here.

14
15 A. The yellow is the Pennington plat. The orange --
16 this line is my line that I put on there just splitting
17 the two parcels. The Gasque plat actually if I may
18 draw on this --

19
20 Q. Let's just give you a green one, how about that?

21 A. Okay. It comes from here. I am not going to be
22 able to draw this straight, but it comes to here. Just
23 imagine that being a straight line.

24 Q. Okay. Now let's put that into evidence.

25 MS. EVERSOLE: I don't have any
objection to that.

1 COURT: Tell you what if you are
2 going to do that, can you finish the
3 green line on the Gasque plat to the
4 best of your ability?

5 MR. YOUMANS: Sure.

6 COURT: Now you want to take a
7 quick look at the Gasque plat?
8

9 MR. YOUMANS: I have it outlined
10 right here on this one.

11 MR. MIKELL: Let's do that. Flip
12 this new exhibit. Let her mark it
13 first.

14 (WHEREUPON DEFENDANT'S
15 EXHIBIT NUMBER 9 WAS
16 MARKED AND ENTERED INTO
17 EVIDENCE).
18

19 MR. MIKELL: Okay on the left hand
20 corner take your pen and write green
21 Gasque and then yellow Pennington and
22 whatever orange was.

23 COURT: Thank you, trying to figure
24 out what green was.

25 MR. MIKELL: Okay, thank you.

BY MS. EVERSOLE:

1 Q. The Pennington plat that you studied has not been
2 recorded, is that correct?

3 A. I could not find where it was recorded.

4 Q. Okay, so that's not a public record. And did you
5 review the deed into Mr. Chaplain for Lot 1 or eight
6 acres Lot 1? Did you look at that?

7 A. I did but it is not that fresh in my mind.

8 Q. Well it is has been put into evidence.

9 A. 23 at 85.

10 Q. Okay and that's for Lot 1 and that is eight acres,
11 right?

12 A. Correct.

13 Q. Where would that be on your plat that you have
14 here?

15 A. Lot 1 eight acres if I was surveying it, I would
16 have it from the orange line down to southern line.

17 Q. Okay and down is by Sanders, is that correct?

18 A. Correct.

19 Q. Now there is a difference of opinion, I guess,
20 between you and Mr. Gasque about the property line
21 between Lot 1 and Lot 2. What do you base your lines --
22 the orange line -- how did you base your determination
23 that's that where the lot line is?
24
25

1 A. I think originally I pretty much split the
2 waterfront and then derived a line that would make
3 equal acreage.

4 Q. Okay and that's following the principles of
5 surveying?

6 A. No that's just -- water frontage is usually the
7 most valuable asset of a property so given the equal
8 frontage on the water front makes it about as equal as
9 you can get.

10 Q. Okay, so you didn't base that line then on any
11 surveying principles?
12

13 A. There are no surveying principles that I know that
14 would go on that.

15 Q. Okay, did you take into consideration the tax
16 records? And the tax maps?
17

18 A. As far as?

19 Q. Any guidance or -- okay, you made a statement
20 about old plats and I don't remember exactly what you
21 were referring to in your direct testimony, but there
22 aren't any old plats for this area, is that correct?

23 A. You mean like a subdivision plat of Ed Capers, I
24 could not find one, no.

25 Q. Okay, but the tax records have the area
subdivided, is that correct?

1 A. They have the individual lots shown. Whether you
2 want to call that a subdivision or not, I would be very
3 leery. There are statements on the tax map that say
4 that these are not surveys, these are derived from
5 other means.

6 Q. I understand but you would admit that the tax
7 assessor's records show Lot 1 as eight acres and Lot 2
8 as eight acres?

9 A. Yes, I would.

10 Q. All right and I see you have a tax record there.

11 A. Yes.

12 Q. I am trying to decide if I want to use what we
13 have in evidence. I am going to show you Plaintiff's
14 Exhibit 1. Those are the same ones you have there.
15 This is Plaintiff's Exhibit 1D and you can tell me if
16 that is the same tax map as what you were just looking
17 at.
18

19 A. Yes, it is the one.

20 Q. That shows Lot 1, Lot 2, Lot 3 and Lot 4, correct.

21 A. Correct.

22 Q. And it has eight acres for each lot.

23 A. It does, yes.

24 Q. And it gives you some sort of a measurement on
25 that as well, doesn't it?

1 A. It does not show any dimensions.

2 Q. Well I guess when I say dimensions I don't
3 remember numbers and that would give an idea of the
4 shape. A general shape?

5 A. It does a general shape but I would not use that
6 as being --

7 Q. Okay so that --

8 A. I would not use that as being --

9 Q. So that tax you didn't use the tax assessor's
10 records to give you guidance in any of this?
11

12 A. Yes I did but not wholeheartedly where I would try
13 to duplicate the same lines splitting the same Lots 1
14 and 2 simply on the idea of equity then? Is that what
15 you are saying?

16 Q. Pretty much yes.

17 A. I don't have any other questions.
18

19 COURT: Just a quick question and
20 you indicated on Defendant's 9 where the
21 Pennington plat you believe is and I
22 think I understood you to indicate and
23 you tell me if I misunderstood this,
24 that the eight acre deed from Cuthbert
25 to Chaplain is actually to the south of

1 the southern connecting line, is that
2 how I understood your testimony today?

3 A. If I were to survey Lot 1
4 that's where I would place it. It would
5 be from this orange line down to the
6 Sanders line, yes.

7 COURT: All right, I don't have
8 anything else.

9 BY MR. MIKELL:

10 Q. Just to make sure the deeds that you looked at,
11 the original deeds you had from the original common
12 Grantor Mr. Appleton were all done back in the 1880's
13 and 1890's?

14 A. Yes.

15 Q. And none of these current documents that we are
16 looking at here that are surveys of any of these
17 properties were done until -- I think the earliest one
18 is 1990 - '76 for Lot 3, is that correct?

19 A. '79.

20 Q. '79 I am sorry and then the next one --

21 A. '77 excuse me, revised in '79.

22 Q. Okay and that's the earliest one so the eighty
23 year gap or so from the time the deeds were done until
24
25

1 the first survey that we can find of any of these
2 properties?

3 A. Correct.

4 Q. Thank you.

5 COURT: Okay, I don't have anything
6 else. Thank you. What else do we have?

7 MR. MIKELL: I have got Maria.

8 COURT: Just Maria?

9 MR. MIKELL: Yes.

10 COURT: Wow I hate to do this. You
11 all tell me do we need a lunch break or
12 should we press on through if we just
13 have Marie?
14

15 MS. EVERSOLE: I will press on
16 through. I am good with that.

17 COURT: Mr. Mikell you need to get
18 a bite?
19

20 MR. MIKELL: No.

21 COURT: Are you sure? Okay.
22 Anyone need a break? You are finished.
23 Thank you so much.

24 MR. MIKELL: Thank you David.
25

1 COURT: Do we need anyone -- Mr.
2 Gasque you all still need him to stick
3 around?

4 MS. EVERSOLE: I do have something
5 that I might want to offer to Mr. Gasque
6 again for rebuttal so I want him to
7 stick around.

8 COURT: Come on it's going to be
9 exciting. Stick around. All right,
10 well let's do this then. If anybody
11 needs a break hold your hand up.
12

13 MARIA ERNESTINE, called as a
14 witness, after being duly sworn,
15 testified as follows:

16 BY MR. MIKELL:

17 Q. Your name?

18 A. Maria Ernestine.

19 Q. Occupation?

20 A. Title abstractor.

21 Q. And how long have you been doing it?

22 A. For over twenty years.

23 Q. And approximately how many title abstracts do you
24 do per year in Beaufort County?
25

A. Thousands.

1 Q. Thousands plural?

2 A. Yes.

3 Q. And did you do a title abstract on Lot 1 at Ed
4 Capers Plantation?

5 A. Yes, sir.

6 Q. What's the tax number on that?

7 A. 3-21-20.

8 Q. And did we find a deed to that Lot from Mr.
9 Appleton to an Abraham Cuthbert?

10 A. Yes, sir.

11 Q. And is that that deed?

12 A. Yes, sir.

13 Q. I don't remember if it's in evidence or not.
14 Let's go ahead and mark it and would you underline for
15 the sake of the Judge just that part that's got the
16 description like Lot 1 and whatever else it says?
17

18 A. Yes, sir.

19
20 COURT: Is it the same as
21 Plaintiff's 2?

22 MR. MIKELL: I don't know. I don't
23 want to make it --

24 MS. EVERSOLE: No, it would be
25 Plaintiff's -- it's in.

1 MR. MIKELL: That's fine. We can
2 start over. Let's go ahead and mark it.

3 MS. EVERSOLE: I don't have any
4 objection if you want to put it in
5 twice. It doesn't matter.

6 COURT: That would be Defendant's -
7 - I lost track.

8 (WHEREUPON DEFENDANT'S EXHIBIT
9 NUMBER 10 WAS MARKED AND
10 ENTERED INTO EVIDENCE).
11

12 BY. MR. MIKELL:

13 Q. Okay and then the next deed in the chain of title
14 would be Book 65, Page 1381 to a Jonathan Cuthbert for
15 Lot 1 Ed Capers?

16 A. Correct.

17 Q. And that document is the one you have?

18 A. Yes, sir.
19

20 MS. EVERSOLE: No objection.

21 (WHEREUPON DEFENDANT'S EXHIBIT
22 NUMBER 11 WAS MARKED AND
23 ENTERED INTO EVIDENCE).
24

25 MR. MIKELL: That is Exhibit 11 but
then the next deed in the chain of title
has already been introduced and it is a

1 deed from Mr. Cuthbert to Mr. Chaplain
2 and that's a Plaintiff's Exhibit.

3 BY MR. MIKELL:

4 Q. So in the essence of this subdivision survey can
5 you tell me where Lot 1 is located?

6 A. Only as referenced on Page T236 or by tax map.

7 Q. So it doesn't have any dimensions in the deeds,
8 all three of them?

9 A. No, only acreage.

10 Q. Footages or anything except acreage?

11 A. No.

12 Q. Now on T236 -- it is somewhere -- does it have a
13 name on Lot 4?

14 A. Yes, sir.

15 Q. And what is that name?

16 A. William Daise.

17 Q. And how about on Lot 2?

18 A. Ben Daise.

19 Q. Lot 1?

20 A. Abraham Cuthbert.

21 Q. And Lot 3?

22 A. William Daise.

23 Q. And Lot 5?

24 A. Joe Smith.

1 Q. Did you take a look at the deed to Lot 5?

2 A. Yes, sir.

3 Q. And who actually got Lot 5 from Mr. Appleton?

4 A. Joseph Smith. I mean Ben Daise, I am sorry.

5 Q. Okay, so Joseph Smith as indicated on this exhibit
6 is not correct, is it?

7 A. No, it is not.

8 MS. EVERSOLE: Object as to
9 relevance.

10 COURT: Well, --

11 MR. MIKELL: I will submit -- if
12 you give me a minute. Where are the
13 plans -- exhibits.
14

15 BY MR. MIKELL:

16 Q. Okay the Exhibit 1 which is to Lucille Smith, it
17 would be Book 1238 at 1793 is for what lot?

18 A. Lot 2.

19 Q. And does it have acreage?

20 A. Eight acres.

21 Q. And does it tell you the dimensions of the lot?

22 A. No, sir.

23 Q. Does it refer to a survey?

24 A. No, sir.
25

1 Q. Okay, do you have a deed there to Lot 2? It may
2 already be into evidence but let's go ahead and put
3 these in just to make sure.

4 MS. EVERSOLE: They are in
5 evidence. Plaintiff's Exhibit Number 1.

6 BY MR. MIKELL:

7 Q. Okay, do you have a deed there to Lot 3?

8 A. Yes, sir.

9 Q. What is the book reference?

10 A. 19 at Page 228.

11
12 MR. MIKELL: Is that in as evidence
13 also?

14 MS. EVERSOLE: David Gasque. It is
15 right here.

16 MR. MIKELL: Okay did we put in a
17 deed to Lot 4?

18 MS. EVERSOLE: At 19 at 229. I
19 didn't put that in. I have no
20 objection.
21

22 (WHEREUPON DEFENDANT'S EXHIBIT
23 NUMBER 12 WAS MARKED AND
24 ENTERED INTO EVIDENCE).
25

MR. MIKELL: Let's put that one in.

1 COURT: Is it correct to say the
2 boundary between Lot 2 if it exists I
3 understand and Lot 3 is not an issue at
4 all. That is a firm boundary without
5 any disputes whatsoever I think, okay.
6 And the same with the southern boundary
7 the Sanders, no issues?

8 MS. EVERSOLE: Yes, sir.

9 BY MR. MIKELL:

10 Q. And did you find this deed in any research that
11 you did?

12 A. Yes, sir.

13 Q. And tell me about that deed.

14 A. That is a deed from the Heirs of William Daise
15 into James Field for Lot 4, in Book 337, Page 85.

16 Q. All of Lot 4 or a portion of Lot 4?

17 A. All of Lot 4.

18 MS. EVERSOLE: It is in evidence as
19 Plaintiff's Number 6.

20 MR. MIKELL: Okay, and it has
21 attached to it a plat by Christiansen
22 which I believe you also introduced,
23 okay.

24 BY MR. MIKELL:

1 Q. Okay and which one is that?

2 A. That is a deed at 22 at 79 that was for Lot 5 into
3 Ben Daise.

4 Q. Okay. So if I understand it let's go through the
5 lots --

6 MS. EVERSOLE: That's in evidence,
7 Number 5.

8 BY MR. MIKELL:

9 Q. If I understand it Lot 1 and this is just from the
10 deeds, went to Abraham Cuthbert, 2 to Benjamin Daise, 3
11 to William Daise, 4 to William Daise and 5 to Benjamin
12 Daise. Is that correct?
13

14 A. Correct.

15 Q. Is that right?

16 A. Yes.

17 Q. So Benjamin Daise got two of these lots in here?
18

19 A. Correct.

20 Q. Now did you find this document in your research?

21 A. Yes, sir.

22 Q. And what is that deed?

23 A. That's deed 36 at 532.

24 Q. And who are the Grantors on that deed?

25 A. Heirs of the Estate of Ben Daise, that is Sam
Daise, Nancy Johnson, John Daise, Celia Smith and Marie

1 Daise and that is to a Cesar Daise for two acres of Lot
2 5.

3 Q. So there is a deed with five people's names on it
4 claiming to be the heirs of Benjamin Daise?

5 A. Correct.

6 Q. So one of them is Samuel Daise?

7 A. Yes it is.

8 Q. But there are four other ones?

9 A. Yes, sir.

10
11 MR. MIKELL: I would like to
12 introduce that into evidence.

13 MS. EVERSOLE: No objection.

14 (WHEREUPON DEFENDANT'S EXHIBIT
15 NUMBER 13 WAS MARKED AND
16 ENTERED INTO EVIDENCE).

17 BY MR. MIKELL:

18 Q. Did you check marriage licenses under Adele Smith?

19 A. Yes, sir.

20 Q. Did you find one?

21 A. Yes, sir.

22 Q. And to whom did she become married?

23 A. To Willie Green.

24 Q. And when?

1 MS. EVERSOLE: I am going to
2 object. This wasn't provided to me in
3 discovery.

4 MR. MIKELL: I didn't ask her about
5 any document. I just asked her what she
6 found.

7 MS. EVERSOLE: I would have to look
8 at the document. She just said she
9 found a document.
10

11 MR. MIKELL: But I am not
12 introducing it. I am just asking her
13 what she found.

14 MS. EVERSOLE: I object.

15 COURT: I will allow it.

16 A. It was in 1940, March of 1940.

17 Q. Now looking at the deed to Lot 5 which you were
18 just looking at from Mr. Appleton ---
19

20 A. Uh huh.

21 Q. Which went to Ben Daise, can you tell me how many
22 acres were in it?

23 A. A total of ten acres.

24 Q. Now let's look at the deed 36 at 532 which is a
25 part of Lot 5, how many acres are in that?

A. It is two acres.

1 Q. Okay and then we have Exhibit A-I which is a deed,
2 a tax deed against the heirs of Ben Daise to Isabel
3 Cuthbert for how many acres?

4 A. Eight acres.

5 Q. So would the two acres in this Exhibit Number 13
6 and the eight acres then in the Exhibit A-I make up the
7 ten acres that was originally deeded out from Mr.
8 Appleton?

9 A. Correct.

10
11 Q. Did you check the court records of Beaufort County
12 for adoption certificates?

13 A. Yes, sir.

14 Q. Did you find anywhere a James Daise was adopted?

15 A. No, sir.

16 Q. Thank you. I don't have any other questions.

17
18 MS. EVERSOLE: I don't have any
19 questions.

20 COURT: Defendants rest?

21 MR. MIKELL: That's it.

22 COURT: All right.

23 MR. MIKELL: I would like to renew
24 the Motion for Directed Verdict of that
25 the issue of --

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COURT: I will take it under
advisement. It is noted.

MR. MIKELL: And I would point out
in addition the fact that the gentleman
claims to be the sole heir of Samuel
Daise via Benjamin Daise but we now have
a deed on the record where there were
four other people's names listed as
heirs of Benjamin Daise.

MS. EVERSOLE: Rebuttal witnesses.

COURT: Of course. He didn't stick
around for nothing.

MS. EVERSOLE: I will start with
David Gasque then he can go home.

COURT: You are still under oath,
sir.

MR. GASQUE: Yes, sir.

BY MS. EVERSOLE:

Q. Through David Youmans there is a plat that was
prepared by a Mr. Pennington that was entered into
evidence as Defendant's Exhibit Number 4. Have you
seen that before?

A. Yes.

1 Q. All right. Tell me what you know about that plat
2 or how it relates to the survey that we did.

3 A. Well when Mr. Chaplain -- he came to our office
4 right after all this started and he brought in this
5 plat and another plat that Pennington had done and
6 wanted it surveyed and that's when I informed him I had
7 just surveyed it for the Smiths. And then I gave him a
8 copy of mine and told him I would be glad to help him
9 but you know he needed to go protect his rights and do
10 whatever he needed to do. But I got a copy of it and I
11 started studying it and it is my opinion that when
12 Pennington did this he kind of misled Mr. Chaplain
13 because if you see the line bank down here, you see Ed
14 Sanders name is up above it, you add these dimensions
15 up, they come fairly close to 385 and there's another
16 document in the record that shows that Lot 1 is 385.

17 Q. And that would be the --

18 A. The A97 that --

19 Q. This?

20 A. Yes. So it is my opinion that when Mr. Pennington
21 did this he just came down from the bank line 385
22 approximately and ran a compass in and then generated
23 this plat and that is where I think everything just
24
25

1 started getting confused. That time frame is -- this
2 plat was done in '98, that one was done in '97.

3 Q. Was there another plat that you were given by
4 Pennington that helped you reach your conclusion?

5 A. Yes, ma'am.

6 Q. And that is Plaintiff's Exhibit Number -- well is
7 that the plat?

8 A. Yes, ma'am.

9 Q. That will be Plaintiff's Exhibit Number 8. Now,
10 tell us about that plat.

11 A. This one was done in '97 which was prior to this
12 one and this is--when he just came out and cut out one
13 acre of land without I don't believe the benefit of
14 surveying the entire tract and you know here again, it
15 is approximately 385 feet to this point. If you see
16 his residual sketch he's acknowledging that there is
17 fifteen acres out there left over. And then at a later
18 date he came in and surveyed the one acre again and
19 came up with this seven acres and then puts Ed Sanders
20 up there which just did not make sense and I think this
21 is the point where the confusion started as to where
22 the lines are.
23
24

25 Q. Okay and you said that you believed Mr. Pennington
misled Mr. Chaplain?

1 A. Yes, I think by doing this he just mislead them.

2 Q. Okay, I don't have any other questions of you.

3 BY MR. MIKELL:

4 Q. You recall this morning when I asked you if this
5 was a very confusing area to survey in and you said
6 yes?

7 A. Yes, sir.

8 Q. And you were here when Mr. Youmans testified and I
9 asked him the same question and got the same answer?
10

11 A. Yes.

12 Q. Okay, no further questions.

13 COURT: I don't have any questions
14 of this witness. You say you have more
15 rebuttal?

16 MS. EVERSOLE: Yes, I am going to
17 have to recall -- first of all let me
18 call Patricia Smith.
19

20 COURT: You are still under oath.

21 BY MS. EVERSOLE:

22 Q. All right, Patricia this document marked
23 Defendant's Exhibit Number 13 seems to indicate that
24 Ben wwaDaise that has to do with Lot 5 and that Ben
25 Daise has apparently -- according to that document --
has other heirs other than Samuel Daise. Do you know

1 anything about that? Were you ever told anything about
2 that throughout your life that there were other
3 relatives of Samuel Daise?

4 A. No. I mean saw this for the first time yesterday
5 and when this situation in 2009 came Mr. Chaplain was
6 clearing the land and we started this action. My
7 father and I had extensive discussions about how he was
8 raised, how he doesn't -- he considers his parents and
9 who the people were that were involved with that land
10 and except for the name of Samuel Daise and Ben Daise I
11 have never heard of any of these other people. Celia
12 Smith, Mary -- never heard of any of them.

14 Q. Do you know the age relationship or the age
15 differences between your father and Manny Daise and
16 Georgie Daise and Marie?

17 A. No, I have no idea how old they were.

18 Q. Do you know if they were older than your father?

19 A. Oh, Marie definitely was. She was old and she
20 lived to be very old.

21 Q. How much older was she than your father?

22 A. I really can't say. I mean as I was growing up, I
23 considered her old then. But I don't know.

24 Q. And you don't know the other two? Did you ever
25 meet the other two?

1 A. No.

2 Q. I don't have any other questions of her.

3 BY MR. MIKELL:

4 Q. What's the date of that deed?

5 A. I think it is 1918.

6 Q. And when were you born?

7 A. 1958.

8 Q. Thirty years?

9 A. Uh huh.

10 Q. You don't know the age difference between your
11 Uncle Manny and your father?
12

13 A. No. I have never met Manny or Georgie. I believe
14 they -- I am not sure where they were when I was born,
15 but I have never met them.

16 Q. And you don't know this Marie -- your Aunt Marie
17 lived with you a great deal and you spent a lot of time
18 with her?
19

20 A. Uh huh.

21 Q. But you don't know how old she was?

22 A. I don't know her exact age. I mean when I lived
23 with her I was six years old but I did know her through
24 my teenage years. I considered her old and she was
25 older than my father.

1 Q. Okay, did you know the other children that were I
2 believe Rose's children?

3 A. No.

4 Q. They were --

5 A. Marie's children, no.

6 Q. Right and they would have been your cousins?

7 A. No, I mean I don't know them.

8 Q. So you don't know any of those people including
9 the ones that are referred to in that deed, do you?
10

11 A. No, I don't.

12 Q. Thank you.

13 MS. EVERSOLE: Then I need to
14 recall James Smith.

15 COURT: All right. Would it be
16 possible for him -- Joanne can you hear
17 him?
18

19 JOANNE: If he will speak up.

20 COURT: If you will speak up you
21 can sit right there, sir. You are still
22 under oath, sir.

23 BY MS. EVERSOLE:

24 Q. All right this is the document that I had showed
25 you yesterday and it has been offered into evidence and
it says "we the heirs of the Estate of Ben Daise".

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MR. MIKELL: Do we have the same
Deadman's Statute issue here?

COURT: Well we are going to go
ahead and let it all in and then deal
with it at some point but your standing
objection stands as an objection but he
may --

MR. MIKELL: It doesn't just apply
to oral representations, it applies to
documents also.

MS. EVERSOLE: You don't know what
my question is.

MR. MIKELL: You handed him a
document and asked him if he can
identify it.

COURT: Well it is an exhibit, go
ahead you can answer.

BY MS. EVERSOLE:

Q. All right, let me ask you this. You know Nancy
Johnson? Have you ever heard of Nancy Johnson? While
you were growing did you ever hear her name?

A. No.

Q. Did you hear of John Daise. Did you ever know
John Daise

1 A. No I never heard --

2 Q. Did you know a Celia Smith?

3 A. Julia?

4 Q. It looks like Celia. C E L I A.

5 A. No.

6 Q. And then a Mary M A R Y Daise?

7 A. Mary, yeah, I know her.

8 Q. And are you related to her?

9 A. I don't know if I am related to her but I am
10 related to everybody.

11 Q. Well who is Mary Daise then? I mean you said you
12 know her? How old is Mary Daise?

13 A. She done died years ago.

14 Q. Did you ever know her to be related to you in
15 anyway?

16 A. No.

17 Q. Or Samuel?

18 A. I know her. She was living not far from where I
19 am living at now.

20 Q. Okay. Manny Daise. You were living with Samuel
21 Daise, you testified to that.

22 A. Correct.

23 Q. Did Manny Daise live there with you?

24 A. No. He was gone.

1 Q. You mean they were gone, how old were they?

2 A. When they leave?

3 Q. Yes.

4 A. I don't know how old they were when they leave,

5 but I know they were living there. They were sick.

6 Q. Okay, since you were a boy?

7 A. Huh?

8 Q. Since you were a young boy?

9 A. Correct.

10 Q. And same with Georgie Daise?

11 A. Yes.

12 Q. Okay and then Marie we've talked about lived with
13 y'all?

14 A. Yes.

15 Q. I don't have any other questions.

16 COURT: Any questions?

17 MR. MIKELL: No.

18 COURT: Anything else from any
19 party?

20 MS. EVERSOLE: Not about testimony.

21 COURT: All right what else did you
22 have?

23 MS. EVERSOLE: He renewed his
24 Motion I think.
25

1 MR. MIKELL: He said he will take
2 it under advisement.

3 MS. EVERSOLE: Oh, just take that
4 under advisement, all right.

5 COURT: All right, that will
6 conclude the hearing except for the
7 stipulation regarding the affidavit that
8 we put on the record earlier.

9 MR. MIKELL: Hold on just a second,
10 Your Honor. Let me find my notes if you
11 don't mind. I have Directed Verdict
12 Motion which you got under advisement
13 that he is not the adopted son of Samuel
14 Daise. I also make one that he is not
15 the sole heir of Benjamin Daise based on
16 this last deed that was in evidence and
17 I also make a Directed Verdict Motion on
18 that. There has been no evidence by
19 this gentleman nor his daughter that
20 they adversely possessed the property.

21 MS. EVERSOLE: Okay, Your Honor,
22 first we claim the property by adverse
23 possession number one. Number two, I
24 still maintain that Mr. Chaplain has no
25

1 standing to challenge whether there was
2 an adoption or there wasn't an adoption
3 and specifically after the testimony of
4 the surveyors the only property that Mr.
5 Chaplain would be entitled to is Lot

6 number 1 which is the eight acres that's
7 contiguously the Sanders' property and
8

9 so, it is completely irrelevant of Lot 2 is

10 Lot 2 is completely irrelevant to the
11 claims of Mr. Chaplain. Mr. Chaplain in
12 his answer alleged title by adverse

13 possession and also by adverse
14 possession under color of title and they
15 have not met either one of those

16 burdens. Certainly he didn't occupy the
17 property in an open, notorious, hostile
18 continuance and in an exclusive manner
19 for ten years. He didn't enclose the

20 property. Maybe -- maybe he cultivated
21 it for a couple of years. To the extent
22 of an adverse possession claim, he has

23 not proven that and he hasn't proven
24 under color of title. He has, if
25 anything, proven that he owns Lot 1 next

1 to Ed Sanders -- the eight acres next to
2 Ed Sanders' property and that's our
3 position.

4 COURT: Well I thank you all very
5 much and I am going to look through some
6 of this and maybe the attorneys and
7 myself can get together in the next
8 couple of days and see what we can
9 figure out.
10

11 MR. MIKELL: And I am going to go
12 back and look at that first exhibit.

13 COURT: Right. So maybe what I
14 will do is wait until you have made your
15 decision on that and then we will get
16 together to discuss. All right thank
17 you all very much. That will conclude
18 the record.
19

20 (WHEREUPON, the
21 hearing was concluded.)
22
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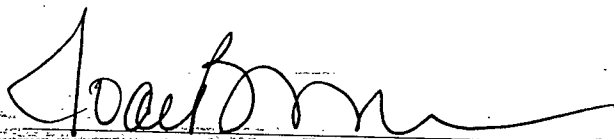
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C E R T I F I C A T E

I, Joanne B. McDonald, Certified Court
Reporter and Notary Public in and for the State
of South Carolina, do hereby certify that the
foregoing One Hundred Five (105) Pages of
typewritten testimony were taken down by me,
then reduced to transcript with computer-aided
transcription; that the same is a true, correct
and complete transcript of the proceedings as
stated in the caption.

I further certify that I am not of kin nor
counsel to any of the parties hereto and,
further, that I have no interest whatsoever in
the outcome of said proceedings.

SO WITNESS MY HAND AND SEAL this 19th of
February, 2013.



Notary Public/Court Reporter

My Commission Expires 09/27/2022

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

2009 J. L. - 7 CIVIL ACTION NO.: 2009-CP-07-2608

LUCILLE PATRICIA SMITH

ELIZABETH W. SMITH
BEAUFORT COUNTY, S.C.
CIVIL COURT
Non-Jury

Plaintiff,

vs.

THE HEIRS AT LAW OF BENJAMIN
DAYS a/k/a, BEN DEAS a/k/a DAISE
THE HEIRS AT LAW OF SAMUEL
DAISE, THE HEIRS AT LAW OF ANNA
DAISE, THE HEIRS AT LAW OF
MANNY DAISE, THE HEIRS AT LAW
OF GEORGIE DAISE, THE HEIRS AT
LAW OF MARIE DAISE MIDDLETON,
THE HEIRS AT LAW OF ROSE
MIDDLETON, THE HEIRS AT LAW OF
CHARLIE MIDDLETON, THE HEIRS
AT LAW OF W.H. DEAS, HOWARD
CHAPLIN, HARRIET CHAPLIN, and all
other persons unknown, having or claiming
any rights, title or interest in or lien upon the
real property described in the Complaint
herein, being designated collectively as
JOHN DOE or SARAH ROE, including all
minors, persons in the Armed Forces, and
insane persons and all other persons under
any other disability who might have or claim
to have any right, title, estate or interest in
or lien upon the real property described in
the Complaint herein,

Defendants.

AFFIDAVIT/ANSWER

PERSONALLY APPEARED BEFORE ME the Defendant, The Heirs at Law of W.H.
Deas, by Bernice D. Davis, who after being duly sworn, deposes and states:

1. I am the owner of property identified in Paragraph 10 (a) of the Complaint as

R300-021-000-0017-0000 which is situated to the north of the Property described in the Complaint. Our property belongs to the heirs of W.H. Deas who was my great grandfather.

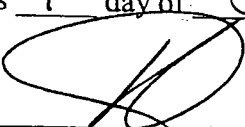
2. I am 72 years of age. I was raised on my great grandfather's property. I have personal knowledge that Patricia's father, James Smith, who I knew as Bobby Daise, grew up on the eight (8) acres to the south of our property. I have always known and believed that the property in dispute has belonged to James ever since the passing of Samuel and Anna.

3. I do not have a boundary dispute with the Plaintiff in this action.

Bernice Davis

Bernice D. Davis
The Heirs of W.H. Deas

SWORN TO and subscribed before me
this 7 day of July, 2009



Notary Public for:
My Commission Expires 12-31-09

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2009-CP-07-2608

LUCILLE PATRICIA SMITH)
Plaintiff,)

Non-Jury

vs.)

THE HEIRS AT LAW OF BENJAMIN)
DAYS a/k/a, BEN DEAS a/k/a DAISE)
THE HEIRS AT LAW OF SAMUEL)
DAISE, THE HEIRS AT LAW OF ANNA)
DAISE, THE HEIRS AT LAW OF)
MANNY DAISE, THE HEIRS AT LAW)
OF GEORGIE DAISE, THE HEIRS AT)
LAW OF MARIE DAISE MIDDLETON,)
THE HEIRS AT LAW OF ROSE)
MIDDLETON, THE HEIRS AT LAW OF)
CHARLIE MIDDLETON, THE HEIRS)
AT LAW OF W.H. DEAS, HOWARD)
CHAPLIN, HARRIET CHAPLIN, and all)
other persons unknown, having or claiming)
any rights, title or interest in or lien upon the)
real property described in the Complaint)
herein, being designated collectively as)
JOHN DOE or SARAH ROE, including all)
minors, persons in the Armed Forces, and)
insane persons and all other persons under)
any other disability who might have or claim)
to have any right, title, estate or interest in)
or lien upon the real property described in)
the Complaint herein,)

**AFFIDAVIT OF
DONNA REARDON**

Defendants.)

PERSONALLY APPEARED, before me, Donna Reardon, who being duly sworn, deposes
and says:

1. My name is Donna Reardon. I am a title abstractor familiar with the practices, policies
and procedures for abstracting the public records in Beaufort County, South Carolina. I own
Reardon Abstracting Services and have abstracted titles in Beaufort County for over ten (10)
years.

TH EPHANT |

2. I was employed to prepare a title abstract on the following property:

All that certain piece, parcel or tract of land situate, lying and being on St. Helena Island, Beaufort County, South Carolina, known as Lot 2, Ed Capers Plantation, consisting of Eight (8) acres, more or less. Tax Map # R300-021-000-0018-0000

3. I found the following documents in the chain of title:

- a. Deed of James D. Smith (recited in the preamble to be the sole heir of Benjamin Days) to Lucille P. Smith dated December 3, 1999 and recorded at the Office of the Register of Deeds in Records Book 1238 at Page 1793, **Exhibit A**;
- b. Deed from Daniel F. Appleton to Benjamin Days dated January 14, 1892 and recorded November 27, 1986, **Exhibit B**.

4. There are no mortgages or restrictions associated with the Property in the public records.

5. I found no deeds out of Benjamin or Ben Days, Deas or Daise for the Property.

6. I found no probate administration for Benjamin or Ben Days, Deas or Daise.

7. I found no quiet title action relating to the Property or the heirs of Benjamin or Ben Days, Deas or Daise.

8. I found no recorded plats on Ed Capers Plantation as a whole nor did I find any for Lot #2. There is a discrepancy with the tax maps. The property today is taxed as Parcel 18 but, looking at the 1954 Hunnicutt map, the Property appears to be Parcel 19. On today's map Parcel 19 has disappeared. In comparing **Exhibit C** (the 1954 Hunnicutt Map), **Exhibit D** (the 1986 tax map), **Exhibit E** (1997 tax map), and **Exhibit F** (the most current tax map), I found the Hunnicutt Map shows Parcel 19 as belonging to "Ben Deas" but the lots are not numbered. The 1986 and 1997 maps show the lot numbers and Lot 2 as being Parcel 18. The most recent map does not show the lot numbers at all and Parcel 19 is missing entirely.

9. The other tax records for this Property are attached at **Exhibit G**, composite of 4 documents. These old records show that Lots 2 and 5 belong to the heirs of Ben Deas. In further researching, I found that Benjamin Days acquired title to Lot 5 by deed of Daniel F. Appleton dated December 23, 1892 and recorded on November 27, 1896 in Book 22 at Page 79. **Exhibit H**. Lot 5 was sold at a tax sale for unpaid 1989 taxes to Isabell Cuthbert, recorded in Book 591 at Page 124; **Exhibit I**.

10. I was asked to obtain the aerial maps of the Property for 1978, 1988 and 2002. They are attached h as **Exhibits J, K and L** respectively.

11. I was also asked to determine if there were any probate administration proceedings for the following people: Anna Days, Deas or Daise; Manny Days, Deas or Daise; Georgie Days, Deas or Daise; Marie Days, Deas or Daise Middleton; Rose Days, Deas or Daise Middleton and Charlie Middleton. I found a lien was filed by the State Department in the Probate Court against "Anna Daise" on November 2, 1961. I otherwise found no probate records or administrations for any of them.

Further Affiant Sayeth Not.

Donna Reardon
Donna Reardon

SWORN TO and subscribed before me
this 29th day of August, 2011.

M.A. Wright
Notary Public for South Carolina
My Commission Expires: 8-4-18



2004

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **WARRANTY DEED**

Whereas the undersigned James D. Smith of 27 David Green Road, St. Helena Island, Beaufort County, South Carolina 29920 is the sold surviving heir of Benjamin Days; Now, therefore

2.

This Deed was prepared by T. Reeve Sams, Attorney at Law, 811 Craven Street, Beaufort, South Carolina 29902.

TAX MAP REFERENCE # R300-021-000-0018-0000 2-m

TO HAVE AND TO HOLD, all and singular the said premises before mentioned

1998 2000 2002 2004 2006 2008 2010 2012 2014 2016 2018 2020

228

unto the said Lucille P. Smith, her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND I hereby bind myself and my successors and assigns to warrant and forever defend all and singular the said premises unto the said Lucille P. Smith, her heirs, successors and assigns, against me and my successors and assigns, and against any person or persons whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, I have set my hand and seal this 3 day of

December, 1999.

Signed, Sealed and Delivered
in the Presence of:

T. Reeve Sams

James D. Smith (Seal)
JAMES D. SMITH

Debbie Starrs

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

PERSONALLY appeared before me Debbie Starrs and made oath that s/he saw the within named JAMES D. SMITH sign and as his act and deed deliver the within written Deed; and that s/he with T. Reeve Sams witnessed the execution thereof.

Debbie Starrs

SWORN to before me this 3 day
of December 1999.

T. Reeve Sams

Notary Public for South Carolina

My Commission Expires: 10/12/2000

Sams
C #10⁰⁰
JOHN A. SULLIVAN JR.
R.M.C.
DEAFORD COUNTY, S.C.

99 DEC -3 PM 4:30 8F
BK 1238 PG 1793
FOLDER #

1795

RECORDED
DEC 11 1999
1238 PG 1793
J.

80 and by me and from her hands and deliver as any that she does freely
 releasing as witness any compulsion dread or fear of any person or persons
 to have or receive or stand as from selling into the within named
 grantor his heirs and assigns all his interest as estate as also all his right
 sole and power of it as to see is assigned, the premises within named as
 above. Susan Co. Appleton Benin under my hand as seal as the city of
 New York the day is your first above written (and) Francis R. Ap-
 pleton A. C. C. for the State of South Carolina in New York.
 Read at the 27th 1896 as one of mine to Benj Dwyer S. J. Bonfield

C. S. C.

Lot 2

Donnie F. Appleton This Indenture, made the fourteenth
 day of January in the year one thousand
 eight hundred and ninety-two between
 Donnie F. Appleton, the first party, being as State of New York party
 the first part and Benjamin Dwyer, Bonfield being South Carolina
 party of the second part Whereas it is the said party of the
 first part for as in consideration of the sum of eight dollars (\$8.00)
 lawful money of the United States to him in hand paid by the party
 of the second part as or before the writing and delivery of these presents
 the receipt whereof is hereby acknowledged his receipt and
 receipt and of these presents does remain under as money as to
 the said party of the second part his heirs and assigns from all the
 certain lot piece or parcel of land situated lying and being in the County
 of St. Helena Bonfield being South Carolina by known as lot number
 one (1) on a map of said County of St. Helena and lot contain-
 ing eight (8) acres or less. Together with and as assigned the
 premises hereinafter as appears hereunder belonging or in anywise
 appertaining as the same are or remain as remains as
 appertaining as to the party; and also all the power right title interest
 property possession claim as does and shall, as well as have as in
 assigning of the said party of the first part of it or to the said premises
 as is found thing with the appertaining to have as to have all as
 assigned the above mentioned and described premises with the appertaining
 into the said party of the second part his heirs and assigns forever. In Wit-
 ness Whereof the said party of the first part has hereunto set his hand
 as and the day is your first above written D. F. Appleton (and) sus-
 an Co. Appleton (and) Signatures as del. in presence of J. P. C. C.
 Francis R. Appleton
 State of New York being as County of New York as Personally
 before me James R. Gleason, one of the above named (and) as
 made oath that he saw the within named Donnie F. Appleton sign
 and as in his act as and deliver the within writing and that he is
 Francis R. Appleton

EXHIBIT B



CHOWAN

CREEK

LADY ISLAND TOWNSHIP
ST. HELENA

See Sheet 20

HUNNICUTT & ASSOCIATES
Mapping Division
JOE W. ARNOLD, III - ASSOCIATE
100 PLACIDAY ST., N.E.
ATLANTA 4, GEORGIA
ATWOOD 204

BEAUFORT COUNTY, SOUTH CAROLINA
DATE 1954
SCALE- 1"= 400

ST. HELENA SHEET NO. 21

(21)

Please note - there are no lot numbers on any of these parcels

1954 Hunnicutt Maps

EXHIBIT C

1986

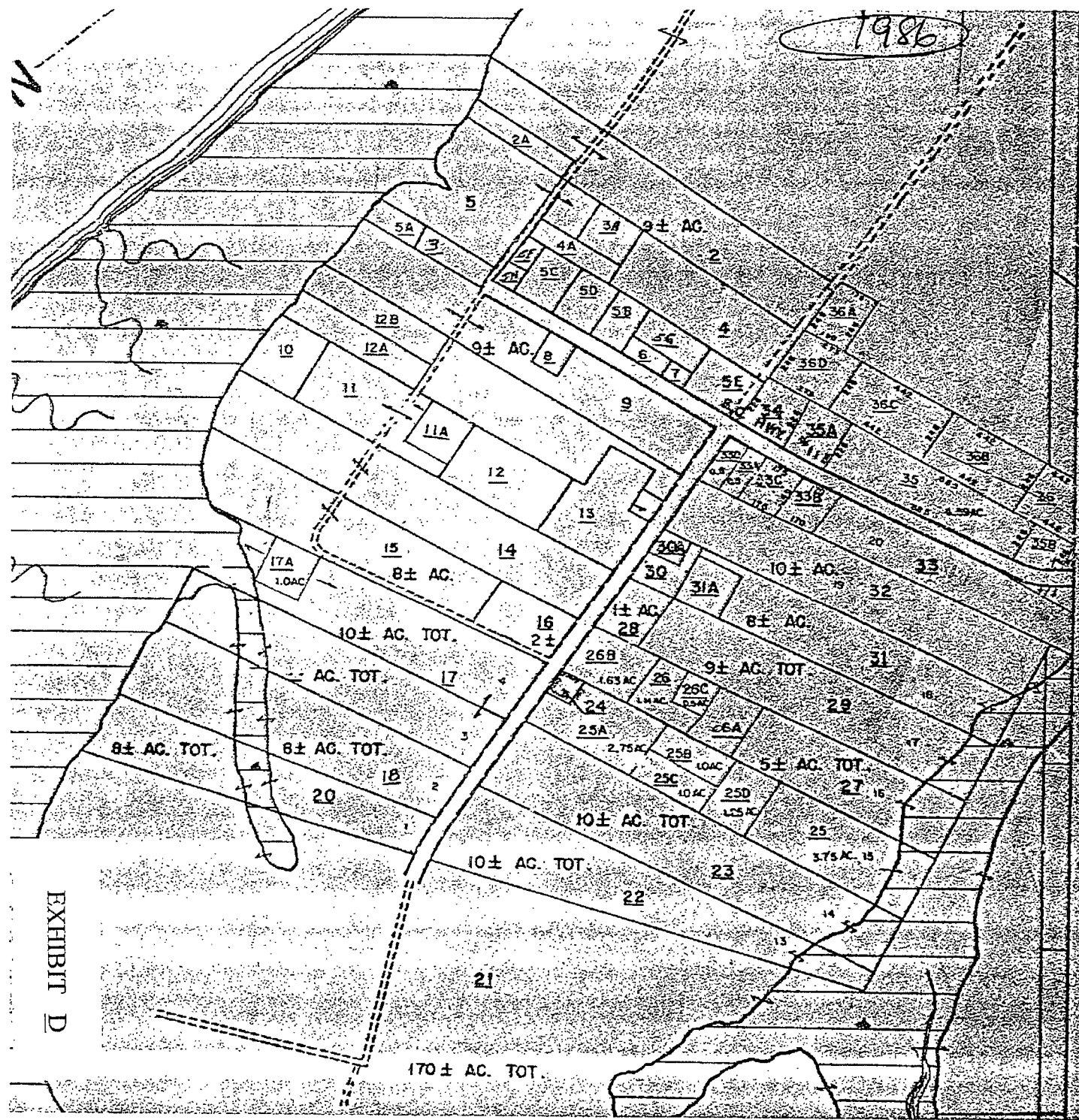


EXHIBIT D

233

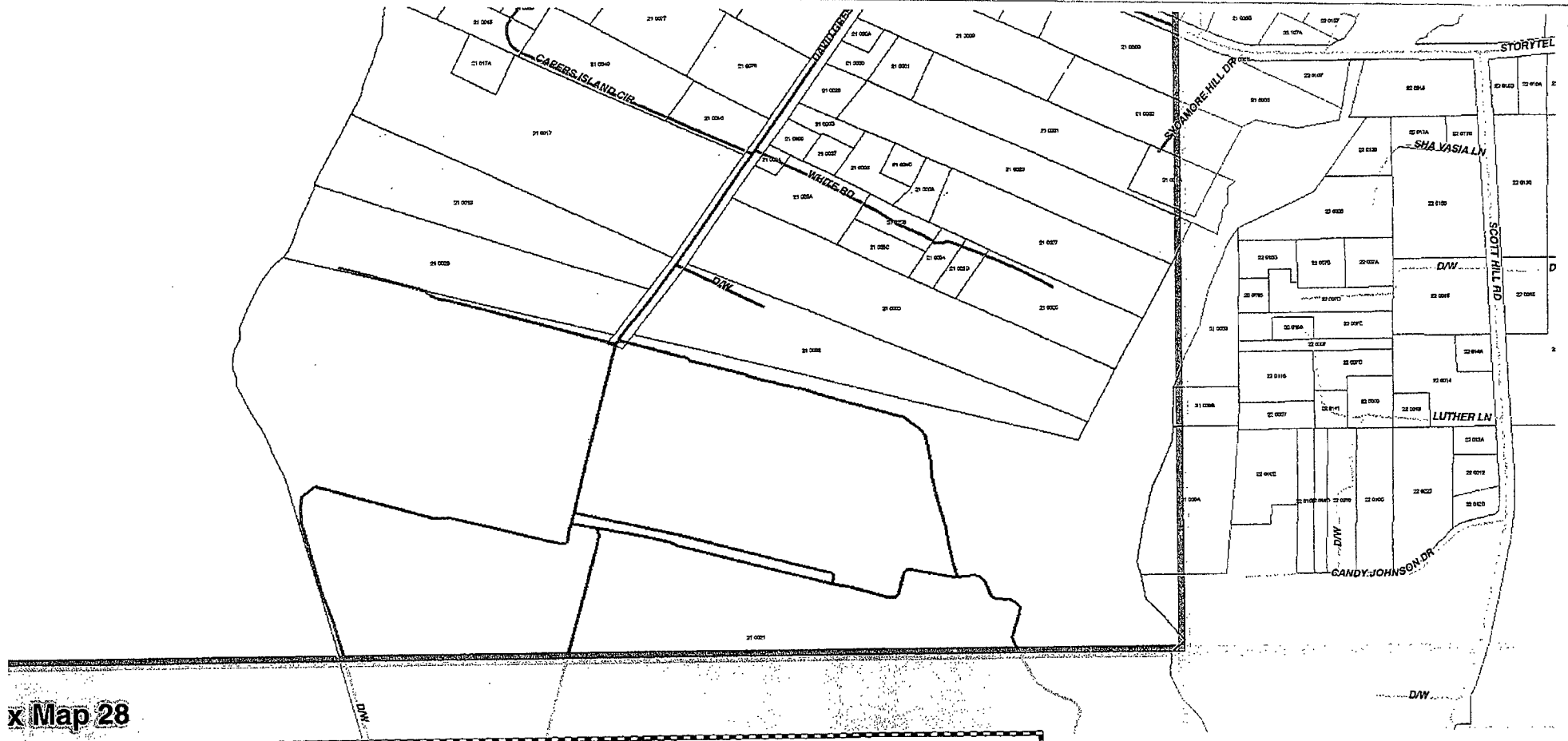
St. Helena Map 21

2011

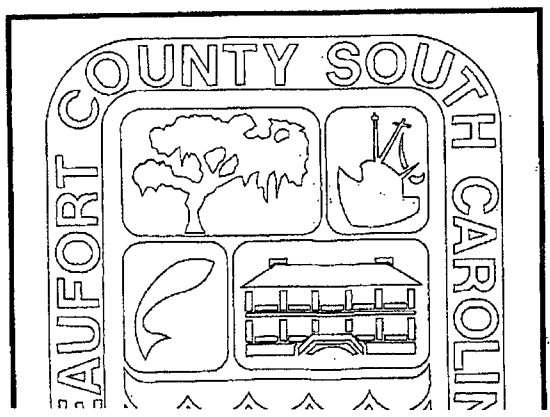
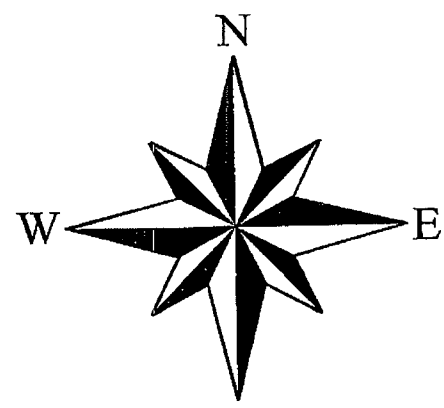
Exhibit E

235

237



x Map 28



			Map_1	Map_2	Map_3		
	Map_4	Map_5	Map_6	Map_7	Map_8		
	Map_9	Map_10	Map_11	Map_12	Map_13		
Map_14	Map_15	Map_16	Map_17	Map_18	Map_19	Map_20	
Map_21	Map_22	Map_23	Map_24	Map_25	Map_26	Map_27	
Map_28	Map_29	Map_30	Map_31	Map_32	Map_33	Map_34	

11/15

21/18

21/15-8Ae

20/30	1.47	16.2	
21/31	1.47	16.5	7.11

EXHIBIT G

2-2-15.31 Ben Deas - Heirs of
Irog., S.C.

16 Acres (Capena)

2-1-703

21/18
22/79-80

21/15 = 8+AC,

21/18 = 8+AC,

21/30

~~21/15 = 8+AC,~~

Heirs of W. H. Deas

21/17

Red-leaf m2, 1896, as desc'd thro. Wilson S. J. [Signature]
c. 10 10.

2, 10, 10

Benjamin Day
From
A 3. Cunningham
Dated 7. Appleton
to the city of New York, New York, the first part and
Benjamin Day, of St. Helena Island, Benford County, South Carolina
part, the second part. Whereas the said party, the first part for
as a consideration of the sum of one hundred dollars (\$100.) last five money
of the United States to him in hand paid by the party, the second part as
or before the writing as being, there, upon the receipt whereof is
kindly acknowledged by said island is conveyed as by these, names, his
revenue island is conveyed into the said party, the second part as to
his heirs as assigns, from all that certain lot piece or parcel, has situate
lying and being on the island, St. Helena County, Benford as well, South
Carolina, being a part, the Island, Leapers Plantation as known as Lot marked
five (5) on a plat, said Plantation said lot containing ten (10) acres more or
less. Together with all as appurtenant the tenements and appurtenances thereto
belonging or in anywise appertaining as the remainder as remains, remains
as remains, rents, issues and profits thereon; and also all the estate right
title interest property possession claim as demand whosoever as well
as less as to having of the said party, the first part of in or to the said piece
as any part as parcel thereof with the appurtenances. In Witness whereof
I have as to I have all as witnesses the above mentioned as desired premises with the ap-
plications into the said party, the second part his heirs as assigns from
In Witness whereof the said party, the first part has hereunto set
his hand as and the day and year first above written D. F. Appleton
(and) Susan L. Appleton (and) Agnes and as do all in presence
of J. R. Olanson Francis R. Appleton

State of New York laid as coming of New York for: Personally ap-
peared before me James R. Gleason (one of the above named witnesses)
and made oath that he saw the within named Francis F. Appleton sign
the within and by said doct. deliver the within conveyance as that he with Francis
R. Appleton intended the operation through J. R. Gleason sworn as sub-
scribers before me this 23rd day of Dec. A.D. 1892 Witnesses my hand and
official seal (seal) Francis R. Appleton & leave for the State of
South Carolina in New York.

State, New York City - is born, New York City. Personally ap-
pears on the 28th day, Nov. on the same night and rising two
before our house. Apparent the wife of the said Daniel F. Appleton
likewise a part of the foregoing conversation as indicated that she did
originate and deliver the same for the use of the paper. Witness
as at a New York City, Nov. 28, 1854.

EXHIBIT
H

Sworn and subscribed before me this 14th day of January A.D. 1892 William
my and as official seal (Seal) Francis R. Appleton & Co. for the
State of South Carolina in New York City - 5 County, New York ss
Personally appeared on the said day, January 1892 before me
Susan Co. Appleton the wife of the said Daniel F. Appleton & she
was a party to the foregoing conveyance & acknowledged that she did so freely and
as to her the same for the use & purpose therein mentioned as the said
Susan Co. Appleton for being present as a party to the same & from her husband did declare & say that she does freely & voluntarily and
without any compulsion dread or fear of any person or persons whatsoever
her husband release & from all rights and the within and I give
him by his & assigns all her interest & estate & also all her right
as claim & dower, & as to all & assigns the premises within and
out and released. Given under my hand & seal
at the City of New York the day and year first above written (Seal) Francis
R. Appleton & Co. for the State of South Carolina in New York
which attests the 27th 1896 and of mine to Being Dues 5, 1896
to be to

W. J. Whipple
County Clerk

to be to

to be to

to be to

to be to

to be to

to be to

to be to

to be to

to be to

to be to

to be to

to be to

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State of South Carolina

County of New York

In all & from these Presents Shall Come

or be made known: J. W. J. Whipple Just. of Probate for the County

of Suffolk in the said State South Carolina: Whereas A. Labadie

Adversary on or before the 8th day of June A.D. 1887 did exhibit a peti-

tion for an order for the sale of Realty in the Probate Court, at Suffolk

County & State of South Carolina representing & said petition is a resolution

of the Estate of Kate Boyan that there is no personal property with

which to pay the debts, and such is praying for an order to sell

the real estate for the payment of her debts & for the distribution of the

residue according to law; and the same being as before the

Court aforesaid came on to be heard on the 23rd day of August 1887 then

there was cause shown & saying the prayer of the Petition should not

be granted, the said Court after mature deliberation in the premises did

order adjudge & decree that the real estate of Kate Boyan last of St.

Helena Island State of South Carolina aforesaid should hereinafter come

to be sold at public auction by the Probate Just. of Suffolk County

on the terms & for the purposes mentioned in the petition of A. Labadie

adversary; as & said decrees are or by reference thereto in the

Register of said Court will appear; & the said W. J. Whipple Just. of Pro-

bate aforesaid after being duly advised the said real estate in the

Year last being "for sale by public outcry on the 26th day of September

A.D. 1888, did then & only as publicly as according to the custom &

in use & custom of the said County

to be to

to be to

to be to

1009

1721

124

1.10 55

THE STATE OF SOUTH CAROLINA,

COUNTY OF BEAUFORT

TAX TITLE BY THE TREASURER

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, the provisions of Title 12, Chapter 51, Section 10 through 170 of the South Carolina Code, 1976, as amended, entitled "Alternate Procedure for Collection of Property Taxes," duly enacted by the General Assembly of the State of South Carolina, provide an additional method and alternate procedure for the collection, handling and distribution of delinquent property taxes, penalties and costs due to counties and other political subdivisions of the State; and

WHEREAS, the provisions of the aforesaid Title 12, Chapter 51, Sections 10 through 170, authorize the levy by distress and sale of so much of the defaulting tax payer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, penalties, costs and sale of property following proper advertisement of the property for sale; and

WHEREAS, I, JOY LOGAN, TREASURER OF BEAUFORT COUNTY, pursuant to the authority of the aforesaid provisions and amendments thereto, issued a warrant or execution in duplicate against Hrs. of Ben Deas, a defaulting tax payer of said Beaufort County, to levy by distress and sale of so much of the defaulting tax payer's estate, real or personal, or both, as may be sufficient to satisfy the 1989 (year) taxes and costs in the amount of \$ 249.48; and

WHEREAS, by virtue of said warrant or execution, Herschel L. Evans, Jr. (authorized officer) did on May 1, 1990 (date of certified mail notice of delinquent tax), under cover of "certified mail -- return receipt requested, deliver to addressee only," mail notice to said delinquent tax payer; and indicate whether or not received; and was received.

WHEREAS, (in the event the certified mail notice was returned), the officer authorized and directed to collect delinquent taxes, penalties and costs did, on N/A (date of posting of notice), take exclusive possession of the property against which such taxes were assessed by posting of a notice at one or more conspicuous places on the real premises hereinafter described, reading "seized by N/A (person officially charged with collection of delinquent taxes of Beaufort County) to be sold for delinquent taxes"; and

"IMPORTANT" Your tax bill will be sent to the address shown on this deed. Please contact the Assessor's office if you have a change of address. (803) 525-7296

BEAUFORT COUNTY TAX MAP REFERENCE table with columns: Dist, Map, Submap, Parcel, Block. Values: 300, 21, 15.

ATTENTION HOMEOWNER: YOU MAY QUALIFY FOR A LOWER TAX RATE ON YOUR PRIMARY RESIDENCE. PLEASE APPLY TO THE COUNTY ASSESSOR'S OFFICE PRIOR TO MAY 14 IF YOU QUALIFY.

EXHIBIT I

244

WHEREAS, Herschel J. Evans, Jr. (person officially charged with the collection for delinquent taxes) did thereafter properly advertise the property for sale once a week for three successive weeks for sale in October 1990 (year); and

WHEREAS, upon the failure of the delinquent tax payer, or anyone acting in his behalf, to pay the taxes, penalties and costs, the property described hereinafter was duly sold at public auction on the sales day of the month of October, in the year 1990 during the usual hours of sale, to Isabell Cuthbert (purchaser), the purchaser and the highest bidder at such sale for the sum of Three hundred dollars (\$ 300.00), and furnished the purchaser a receipt for such purchase money and annexed such receipt to the duplicate warrant for the endorsement thereon of his actions thereunder; and

WHEREAS, under cover of certified mail, return receipt requested, deliver to addressee only, Herschel J. Evans, Jr. (person officially charged with the collection of delinquent taxes) did, on August 27, 1991 (date) mail to the owner of record on February 1, 1991 (year of expiration of redemption period) a Notice addressed to Hrs. of Ben Deas c/o Isabell Cuthbert (owner of record on February 1, immediately preceeding the end of the redemption period) that the property described on the Notice had been sold for taxes and advising said owner if not redeemed by paying taxes, penalties, costs and interest in the amount of \$273.48 on or before October 1, 1991 (twelve months from date of sale) a tax title would be issued to the successful purchaser at the tax sale; and indicate whether or not redeemed not redeemed; and

WHEREAS, twelve months have elapsed since the date of sale for delinquent taxes, and the said Hrs. of Ben Deas (defaulting tax payer) or other parties interested after due notice have failed to redeem said lands so sold.

NOW THEREFORE, I, JOY LOGAN, TREASURER OF THE COUNTY OF BEAUFORT, in consideration of the premises, and the sum of Three hundred (\$ 300.00) DOLLARS to me by the said Isabell Cuthbert have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Isabell Cuthbert;

All that certain piece, parcel or tract of land, situate and being on St. Helena Island, in Beaufort County, South Carolina, containing eight (8) acres and designated as District 300, Map 21, Parcel 15 on the tax redorders of the Beaufort County Assessor.

This is the same lot of land sold at the Delinquent Tax Sale of

126

October one, 1992, for delinquent

taxes in the name of Hrs. of Ben Deas

(District 300, Map 21, Submap)

(Parcel 15, Subparcel)

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises hereby granted, and with the appurtenances, unto the said Isabell Cuthbert, heirs and assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina, in such cases made and provided.

WITNESS my Hand and Seal this 16th day of January, in the year of our Lord One Thousand Nine Hundred and Ninety-Two and in the 216 year of the Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

Candace O. Harvey
Alice M. Hollingsworth

Joy Logan
JOY LOGAN
TREASURER OF BEAUFORT COUNTY

State of South Carolina)

Probate

County of BEAUFORT)

Personally appeared before me Candace O. Harvey who, being duly sworn, deposed and said that (s)he saw the within named Joy Logan as treasurer of Beaufort County sign, seal and deliver the within deed, and that (s)he, together with Alice M. Hollingsworth, witnessed the execution thereof.

Candace O. Harvey

SWORN to and subscribed before me

this 16 day of

January, 1992
Alice M. Hollingsworth (SEAL)
Notary Public for South Carolina

My commission expires: My Commission Expires June 5, 1993

Treasurer
The State of South Carolina,

127

DEED

TREASURER OF BEAUFORT COUNTY
TO

Isabeli Cuthbert

Rt. 2 Box 279
St. Helena, SC 29920

Filed 17th day
of Jan A.D. 19 92
at 11:20 o'clock A.M.
and recorded in Book 591
Page 124 Fee, \$ 10.00
S/ Thomas A. Gould
R.M.C. or Clerk Court C.P. & G.S.
Beaufort County, S.C.

Recorded this 29th day
of January 19 92
in Book 4 Page 50
Fee, \$ 10.00
Thomas A. Gould
BEAUFORT
Auditor, Beaufort County, S.C.

EXHIBIT J 1978

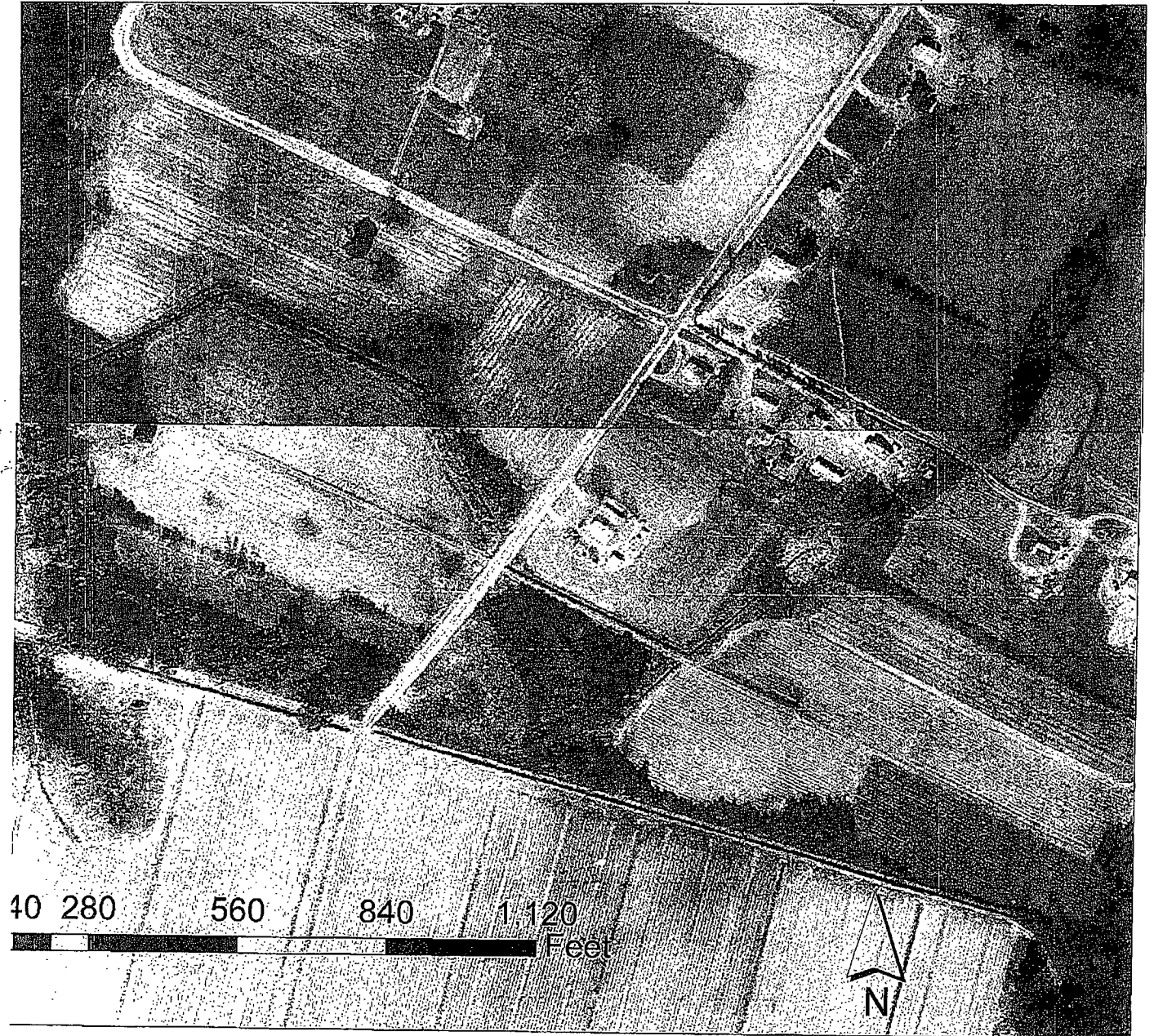


EXHIBIT K 1988



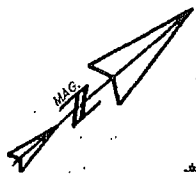
Exhibit L

2002

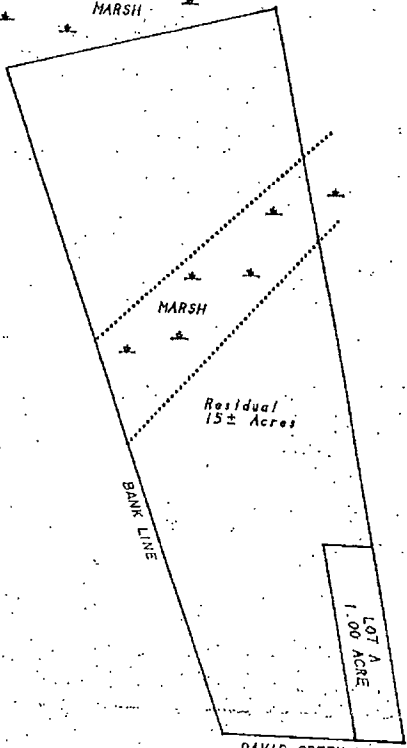
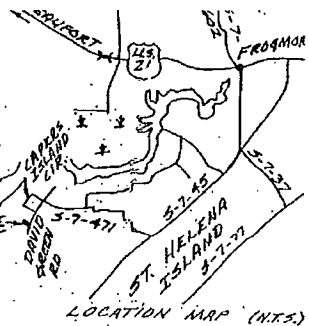
150

R300 021 000 0018 0000
2002 Aerial





Johnathan Cuthbert



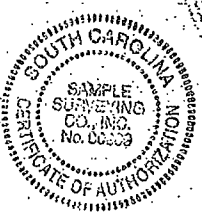
Johnathan Cuthbert

LOT A
1.00 ACRE

LOT 3
Ben Deas

RESIDUAL SKETCH

DAVID GREEN ROAD (30' R/W)
(Unpaved County Maintained)



PLAT
LOT A, PART OF LOT 1, CAPERS PLANTATION

LOCATED
ST. HELENA ISLAND
BEAUFORT COUNTY, SOUTH CAROLINA
DATE: April 2, 1997 SCALE: 1" = 50'

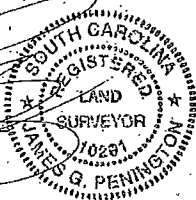
LEGEND:
● Iron New, 5/8" Rebar

"I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class C survey as specified therein."



- NOTES:
1. REFERENCE T.M.S. 300-21-20
 2. REFERENCE DEED BOOK 565 PAGE 1381
 3. SURVEYED FOR Gerald A. & Marva Neal

James G. Penington, P.E., No. 10291
Sample Surveying Co., Inc., P.O. Box 31817
Charleston, S.C. 29417-8717-8191



PLAINTIFF'S
EXHIBIT
NO. 8

1004/2385

2/10/98

1130

TITLE TO REAL ESTATE
The R. L. Bryson Company, Columbia, S. C.
Revised November, 1961

Form 14-3

2385

State of South Carolina,
COUNTY OF BEAUFORT

Know All Men by These Presents, That

I, JONATHAN CUTHBERT,

BEAUFORT COUNTY, S.C.

RECORDING FEES COLLECTED

TRANSFER FEES \$ 0

COUNTY \$ 17.60 STATE \$ 4.60

hereinafter referred to as Grantor(s)

in the State aforesaid,

for and

in consideration of the

sum of SIXTEEN THOUSAND AND NO/100 (\$16,000.00)

to me paid by HOWARD CHAPLIN, JR. & HARRIET CHAPLIN, hereinafter referred to

as Grantee(s) in the State aforesaid for which (the receipt of which is hereby acknowledged)

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Grantee(s) HOWARD CHAPLIN, JR. & HARRIET CHAPLIN, their heirs and assigns forever:

ALL that certain piece, parcel or lot of land, situate, lying and being on St. Helena Island, Beaufort County, South Carolina, and being a portion of Lot 1, capers Plantation, containing eight (8) acres, more or less, and is shown as Lot No. 1 Ed Capers.

This is the same property which was conveyed to the Grantor herein by deed of Elrid M. Moody, on November 26, 1990, and recorded in the office of the RMC for Beaufort County at Book 565, Page 1381.

This deed prepared without the benefit of a title examination by the law firm of Louis O. Dore, P.A., 133 Sea Island Parkway, Lady's Island, South Carolina 29902.

Dist. 300, Map 21, Parcel 20.

BEAUFORT COUNTY RECORDS
300 21 20

Address:

255 Stuyvesant St.

St. Helena Island, S.C. 29926

This being the same (a part of the) property heretofore conveyed to the Grantor(s) by Deed of

recorded

, 19 , Deed Book

, at page

#3

253

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee(s) Heirs and Assigns forever.

2386

And the Grantor(s) do hereby bind Grantor(s) Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee(s)

Heirs and Assigns, against Grantor(s) and Grantor(s) Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal this 16th day of April
in the year of our Lord one thousand nine hundred and ninety-seven
and in the two hundredth and Twentieth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Marge C Mack
1st WITNESS
Jonathan Cuthbert
2nd WITNESS

Jonathan Cuthbert (SEAL)
JONATHAN CUTHBERT (SEAL)

STATE OF SOUTH CAROLINA,
BEAUFORT COUNTY.

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 16TH

day of APRIL 1997.
Marge C Mack
Notary Public of South Carolina

My Commission Expires: 12/13/03

RECORDED THIS 2 DAY
OF 16 PAGE 37
IN BOOK 16
Sharon O. Burney
AUDITOR, BEAUFORT COUNTY, S.C.

5306
FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
98 JAN -9 PM 4:20 /MLC
BK 1004 LG 2385
FOLDER#

State of South Carolina,

County of _____

TO

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for
record in my office at _____ M. o'clock on
the _____ day of _____
19 _____ and was immediately entered upon the proper
indexes and duly recorded in Book
of Deeds, page _____

Register of Meme Conveyances

for _____ County, S. C.

I hereby certify that the within Deed has been

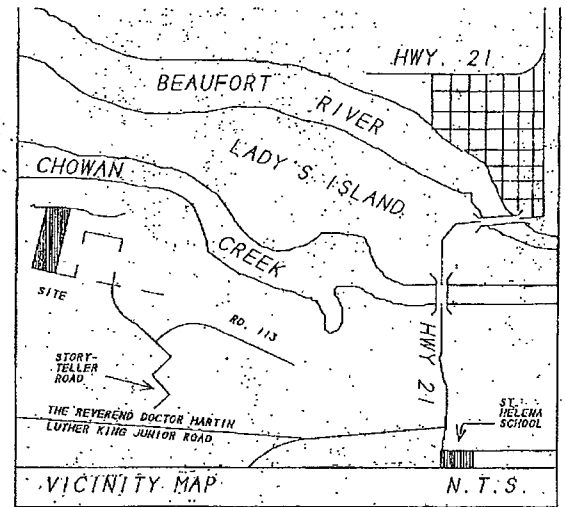
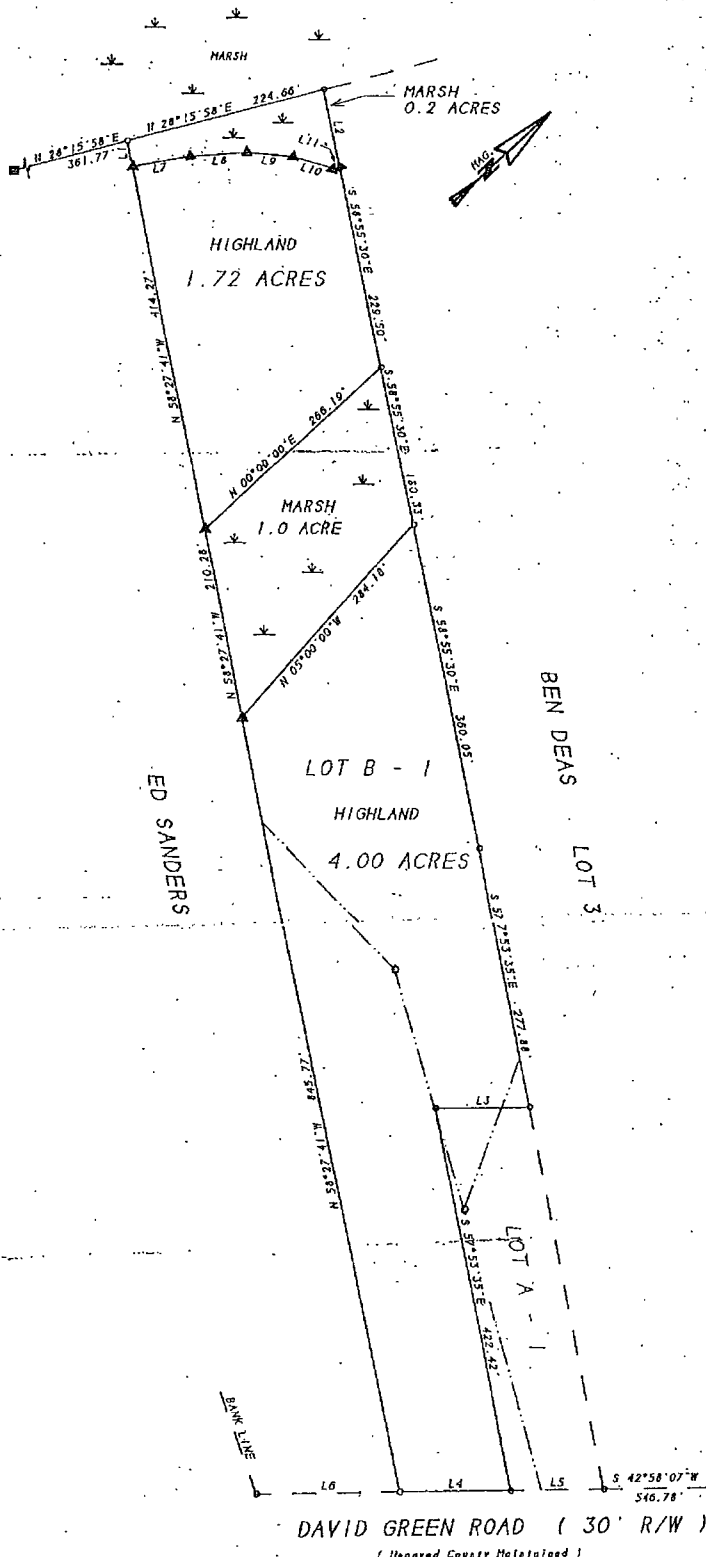
this _____ day of _____

19 _____ Recorded

In Book, _____ of Deeds, page _____

Auditor for _____ County

THE N. L. SMITH COMPANY, COLUMBIA, S. C.



NOTES:

1. Reference Tax Map No. 300-21-20
 2. Reference Deed Book 565 Page 1381
 3. Reference Plat by Niels Christensen Dated Nov. 2, 1979 Deed Book 337, Page 1187
 4. Reference Drawing by Niels Christensen
- Compiled from Notes and Drawings by Arthur O. Christensen

PLAT OF
7.02 ACRES
LOT 1, CAPERS PLANTATION
LOCATED
ST. HELENA ISLAND
BEAUFORT COUNTY, SOUTH CAROLINA
DATE: JANUARY 15, 1998 SCALE 1" = 100'



I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards (Manual) for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for Class A survey as specified therein.

James G. Pennington, S.L.S. No. 10291
Sample Surveying Co., Inc., P.O. Box 31817
Charleston, S.C. 29417 571-5191

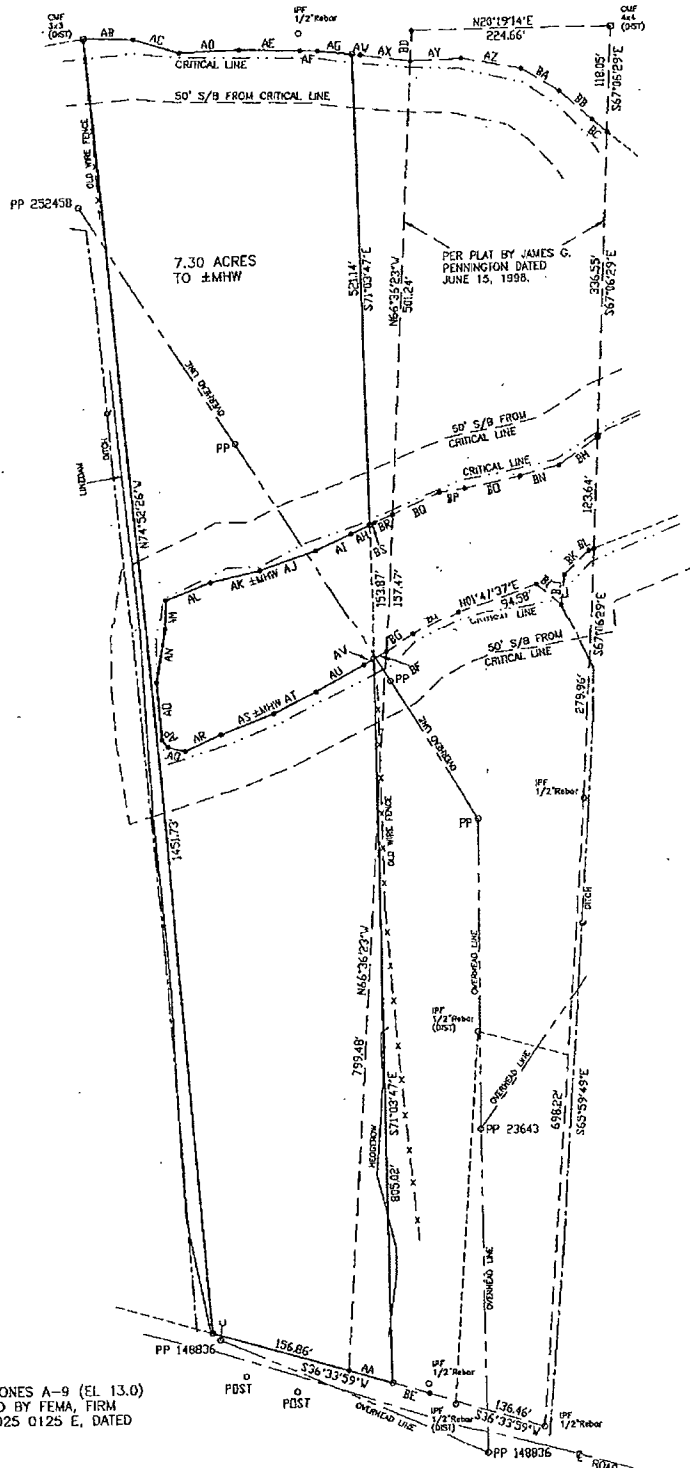
2065-D SAVANNAH HIGHWAY
P.O. BOX 31817
CHARLESTON, SC 29417
PHONE (803) 571-5191



BOUNDARY SURVEY
PREPARED FOR
HARRIETT & HOWARD CHAPLIN, JR.

LOT 1, ED CAPERS PLANTATION
BEAUFORT COUNTY, SOUTH CAROLINA

PROPERTY MAP 300 TO SCALE



NO.	BEARING	DISTANCE
AA	S36°23'59\"/>	50.79'
AB	N22°29'19\"/>	55.46'
AC	N37°51'47\"/>	51.82'
AD	N18°25'55\"/>	65.65'
AE	N22°35'55\"/>	67.76'
AF	N22°35'55\"/>	19.15'
AG	N27°16'34\"/>	38.85'
AH	S14°13'08\"/>	23.57'
AI	S04°11'08\"/>	42.11'
AJ	S02°02'43\"/>	62.34'
AK	S07°53'15\"/>	53.85'
AL	S00°09'32\"/>	52.60'
AN	S68°05'59\"/>	39.53'
AO	S51°14'34\"/>	68.23'
AP	S14°14'02\"/>	64.70'
AQ	N59°24'13\"/>	10.44'
AR	N34°26'28\"/>	19.08'
AS	N13°51'56\"/>	43.47'
AT	N30°42'56\"/>	62.48'
AU	N06°58'36\"/>	52.84'
AV	N09°28'59\"/>	60.60'
AW	N09°28'59\"/>	73.44'
AX	N27°16'34\"/>	9.43'
AY	N03°58'13\"/>	56.30'
AZ	N18°20'24\"/>	56.82'
BA	N31°08'56\"/>	69.41'
BB	N31°17'17\"/>	50.29'
BC	N62°29'02\"/>	53.55'
BD	N60°07'43\"/>	17.35'
BE	N64°44'41\"/>	33.60'
BF	S36°33'59\"/>	43.10'
BG	N09°28'59\"/>	15.60'
BH	N07°13'32\"/>	35.54'
BI	N61°25'50\"/>	57.08'
BJ	N62°31'29\"/>	36.83'
BK	N22°43'00\"/>	33.22'
BL	N06°25'20\"/>	38.07'
BH	S14°28'10\"/>	6.27'
BN	S06°41'30\"/>	53.73'
BO	S08°43'11\"/>	45.67'
BP	S14°10'51\"/>	64.06'
BQ	S06°56'53\"/>	25.03'
BR	S05°25'53\"/>	57.76'
BS	S04°13'08\"/>	41.30'
		6.23'

THIS PROPERTY IS LOCATED IN ZONES A-9 (EL 13.0) & A-9 (EL 14.0) AS DETERMINED BY FEMA, FIRM COMMUNITY-PANEL NUMBER 450025 0125 E, DATED 11-4-92.

R300-021-000-0020-0000

0 60' 100' 200' 300'

SCALE 1" = 100'

NOVEMBER 30, 2009



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

DAVID S. YOUNANS RLS 9766
DEAUFORT SURVEYING, INC.
1613 PARIS AVENUE
BEAUFORT, S.C. 29935
PHONE (843) 624-3261

256

565/1381

31294

1381

Revenue Stamps
Collected
State \$ 1.10 County \$.55
Beaufort County, SC

THE STATE OF SOUTH CAROLINA,
COUNTY OF BEAUFORT

TAX TITLE BY THE TREASURER

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, the provisions of Title 12, Chapter 51, Sections 10 through 170 of the South Carolina Code, 1976, as amended, entitled "Alternate Procedure for Collection of Property Taxes," duly enacted by the General Assembly of the State of South Carolina, provide an additional method and alternate procedure for the collection, handling and distribution of delinquent property taxes, penalties and costs due to counties and other political subdivisions of the State; and

WHEREAS, the provisions of the aforesaid Title 12, Chapter 51, Sections 10 through 170, authorize the levy by distress and sale of so much of the defaulting tax payer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, penalties, costs and sale of property following proper advertisement of the property for sale; and

WHEREAS, I, ELRID M. MOODY, TREASURER OF BEAUFORT COUNTY, pursuant to the authority of the aforesaid provisions and amendments thereto, issued a warrant or execution in duplicate against Hrs. of Abraham Cuthbert a defaulting tax payer of said Beaufort County, to levy by distress and sale of so much of the defaulting tax payer's estate, real or personal, or both, as may be sufficient to satisfy the 1988 (year) taxes and costs in the amount of \$ 186.21; and

WHEREAS, by virtue of said warrant or execution, H.J. Evans Jr. (authorized officer) did on May 1, 1989 (date of certified mail notice of delinquent tax), under cover of "certified mail - return receipt requested, deliver to addressee only," mail notice to said delinquent tax payer; and indicate whether or not received; and was received.

WHEREAS, (in the event the certified mail notice was returned), the officer authorized and directed to collect delinquent taxes, penalties and costs did, on N/A (date of posting of notice), take exclusive possession of the property against which such taxes were assessed by posting of a notice at one or more conspicuous places on the real premises hereinafter described, reading "seized by N/A (person officially charged with collection of delinquent taxes of Beaufort County) to be sold for delinquent taxes"; and

WHEREAS, H.J. Evans Jr. (person officially charged with the collection for delinquent taxes) did thereafter properly advertise the property for sale once a week for three successive weeks for sale in October 1989 (year); and

WHEREAS, upon the failure of the delinquent tax payer, or anyone acting in his behalf, to pay the taxes, penalties and costs, the property described hereinafter was duly sold at public auction on the sales day of the month of October, in the year 1989 during the usual hours of sale, to Jonathan Cuthbert (purchaser), the purchaser and the highest bidder at such sale for the sum of Two-Hundred Dollars (\$200.00

), and furnished the purchaser a receipt for such purchase money and annexed such receipt to the duplicate warrant for the endorsement thereon of his actions thereunder; and

WHEREAS, under cover of certified mail, return receipt requested, deliver to addressee only, H.J. Evans Jr. (person officially charged with the collection of delinquent taxes) did, on August 27, 1990 (date) mail to the owner of record on February 1, 1990 (year of expiration of redemption period) a Notice addressed to Hrs. of Abraham Cuthbert c/o Lawrence Cuthbert (owner of record on February 1, immediately preceeding the end of the redemption period) that the property described on the Notice had been sold for taxes and advising said owner if not redeemed by paying taxes, penalties, costs and interest in the amount of \$202.21 on or before Oct. 2, 1990 (twelve months from date of sale) a tax title would be issued to the successful purchaser at the tax sale; and indicate whether or not redeemed not redeemed; and was received.

WHEREAS, twelve months have elapsed since the date of sale for delinquent taxes, and the said Hrs. of Abraham Cuthbert (defaulting tax payer) or other parties interested after due notice have failed to redeem said lands so sold.

NOW THEREFORE, I, ELRID M. MOODY, TREASURER OF THE COUNTY OF BEAUFORT, in consideration of the premises, and the sum of Two-Hundred Dollars (\$ 200.00) DOLLARS to me by the said Jonathan Cuthbert have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Jonathan Cuthbert

ALL that certain piece, parcel, or tract of land, lying on St. Helena Island, Beaufort County, Beaufort County, South Carolina, containing eight (8) acres, and shown as Lot no. 1, Ed Capers.

BEAUFORT COUNTY TAX MAP SECTION				
Block	Map	Subsec.	Page	Area
300	21		20	

This is the same lot of land sold at the Delinquent Tax Sale of
October 2, 19 89, for delinquent
taxes in the name of Hrs. of Abraham Cuthbert.
(District 300, Map 21, Submap _____)
(Parcel 20, Subparcel _____)

1383

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said
premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises hereby granted, and with the appurtenances,
unto the said Jonathan Cuthbert, heirs
and assigns forever, according the form, force and effect of the laws and usages of the State of South
Carolina, in such cases made and provided.

WITNESS my Hand and Seal this 26th day of November, in the year of our Lord
One Thousand Nine Hundred and Ninety and in the 21st year
of the Independence of the United States of America.

Signed, Sealed and Delivered in the
Presence of:

Candace O. Harvey
Alice M. Hellingworth

Elrid M. Moody
ELRID M. MOODY
TREASURER OF BEAUFORT COUNTY

State of South Carolina)
County of BEAUFORT)

Probate

Personally appeared before me Candace O. Harvey who, being duly sworn, deposed
and said that (s)he saw the within named Elrid M. Moody as treasurer of Beaufort County sign, seal and
deliver the within deed, and that (s)he, together with Alice M. Hellingworth witnessed the
execution thereof.

Candace O. Harvey

SWORN to and subscribed

before me this 26 day

of November, 19 90

Alice M. Hellingworth (SEAL)
Notary Public for South Carolina

My commission expires: June 3, 1995
My commission expires:

Delinquent Tax
The State of South Carolina,

DEED

1384

TREASURER OF BEAUFORT COUNTY
TO

Jonathan Cuthbert

Rte. 2, Box 279

St. Helena SC 29920

Filed 26 day

of Nov. A.D. 1990

at 3:10 o'clock P M.

and recorded in Book 565

Page 1381 Fee, \$ 10⁰⁰

Theresa A. Davis
R.M.C. or Clerk Court C.P. & G.S.
Beaufort County, S.C.

Recorded this 13th day

of December, 1990

in Book W Page 1814

Fee, \$

Mary Ann Gray
Auditor, Beaufort County, S.C.

RECEIVED
THERESA A. DAVIS
2/27/91 11:00 AM
90120126 PM 3:13

The State of South Carolina. } KNOW ALL MEN BY THESE PRESENTS,

592

THAT We, the Heirs of the Estate of Ben Deas, that is to say, Mary Deas, John Deas, Eliza Smith and Mary Deas

In the State aforesaid, and County of Beaufort, in consideration of the sum of Twenty-five DOLLARS, to us in hand paid at and before the sealing of these Presents, by Benjamin Deas in the State aforesaid and County of Beaufort, (the receipt whereof is hereby acknowledged) have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell and release unto the said Benjamin Deas

All that certain piece of land or lot of land situated lying and being on St Helena Island, Beaufort and John Deas, and being on Papers Plantations, containing two acres, more or less (2), and the same having been cut off of the land of the Estate of Ben Deas, and known on the Part Book of the Estate of Ben Deas, Papers Plantations, and bounded as follows: On the North by the Estate of Joe Smith, on the East by Estate of Ben A. Kitch, on the South by M. H. Deas, and on the West by Estate of Ben Deas.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Benjamin Deas

His Heirs and Assigns forever.

AND We do hereby bind, Benjamin Deas Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said premises unto the said Benjamin Deas Heirs and Assigns against us and ours Heirs, lawfully claiming, or to claim the same, or any part thereof.

WITNESS Hand, and Seal, this 12 day of February in the year of our Lord one thousand

hundred and 18 and in the one hundred and 18 year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Will Scott
J. R. Kitch

Benjamin Deas
John Deas
Mary Deas
Eliza Smith

25
(L. S.)
(L. S.)
(L. S.)
(L. S.)

THE STATE OF SOUTH CAROLINA,
Beaufort County.

PERSONALLY appeared before me, Will Scott and made

oath that he saw the within named Benjamin Deas, Mary Deas, John Deas, Eliza Smith and Mary Deas sign, seal, and as Wit act and deed, deliver the within written Deed; and that he with J. R. Kitch witnessed the execution thereof.

SWORN to before me, this 12 day of February Anno Domini 1918
(seal) J. R. Kitch
Mary Deas

Will Scott

THE STATE OF SOUTH CAROLINA,
Beaufort County.

Renunciation of Dower.

J. R. Kitch, a Major's Estate of St Helena do hereby certify unto all whom it may concern, that Mrs. Anna Deas and Mary Deas wife of the within named Benjamin Deas did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Benjamin Deas Heirs and Assigns; all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal, this 12 day of February Anno Domini 1918
(seal) J. R. Kitch
Mary Deas

Anna Deas
Mary Deas

Recorded and certified, this 12 day of March 1918

W. R. Rogers C. C. P.

(J. R. Kitch)

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

Court of Appeals Case No. 2012-213578/
Beaufort Case No. 09-CP-07-2608

Lucille Patricia Smith, Respondent

v.

The Heirs at Law of Benjamin Days a/k/a Ben Deas a/k/a Daise, etc., et al,

Of whom Howard Chaplin and Harriet Chaplin are the Appellants

**CERTIFICATE OF SERVICE BY HAND DELIVERY OF
APPELLANTS' INITIAL BRIEF, REPLY BRIEF AND RECORD ON APPEAL**

The undersigned attorney for the Appellants hereby certifies that on the 22nd day of November, 2013, he had served by hand delivery, a true and accurate copy of Appellants' Initial Brief, Appellants' Reply Brief and Record on Appeal, to Alysoun M. Eversole, Esquire, Eversole Law Firm, PC, 1509 King Street, Beaufort, SC 29902, attorney for Respondent.

Dated: November 22, 2013



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Appellants
574 Sea Island Parkway
Saint Helena Island, SC 29920-4205
(843) 838-5290

RECEIVED
NOV 27 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge
Fourteenth Judicial Circuit

Case No. 2009-CP-07-2608

HOWARD CHAPLIN, JR. AND HARRIET CHAPLIN, Appellants

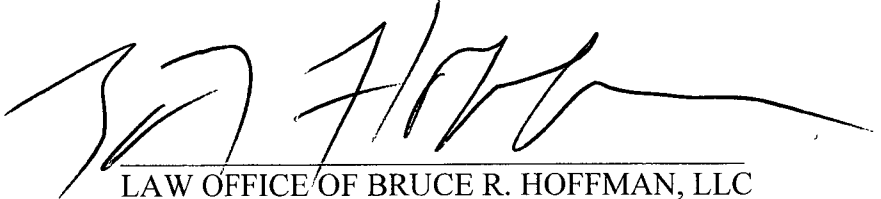
v.

LUCILLE PATRICIA SMITH, Respondent

CERTIFICATE OF COUNSEL

I, Bruce R. Hoffman, hereby certify that this Record on Appeal contains all material proposed to be included by both parties and no other material.

November 19, 2013



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN,
Attorney for Plaintiff/Appellant
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

THE STATE OF SOUTH CAROLINA

2012 DEC 4 PM 4:48
In the Court of Appeals

JOSEPH H. ROSENEAU
BEAUFORT COUNTY, S.C.
APPEAL FROM BEAUFORT COUNTY
CLERK OF COURT
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

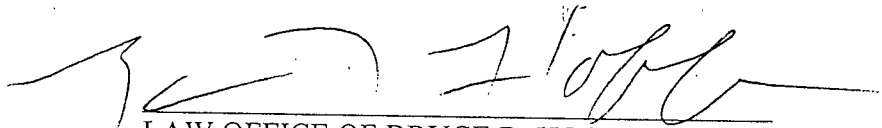
Case No. 2009-CP-07-2608

Lucille Patricia Smith, ... Respondent,
v.
Howard Chaplin, Harriet Chaplin, ... Appellants.

NOTICE OF APPEAL

Howard Chaplin and Harriet Chaplin appeal the Judgment, Decree & Final Order of the Honorable Marvin H. Dukes, III dated November 5, 2012. Appellants received written notice of entry of this Order on November 6, 2012.

December 4, 2012



LAW OFFICE OF BRUCE R. HOFFMAN, LLC,
BY: BRUCE R. HOFFMAN,
Attorney for Appellants Howard Chaplin and
Harriet Chaplin
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

Other counsel of record:

Alysoun M. Eversole
Eversole Law Firm, PC
1509 King Street
Beaufort, SC 29902
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

2012 DEC -4 PM 4:49

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.

APPEAL FROM BEAUFORT COUNTY COURT
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

Case No. 2009-CP-07-2608

Lucille Patricia Smith, ... Respondent,

v.

Howard Chaplin, Harriet Chaplin, ... Appellants.

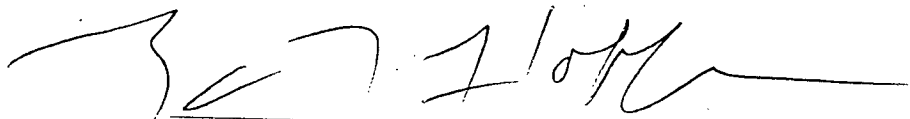
PROOF OF SERVICE OF NOTICE OF APPEAL

The undersigned attorney for Appellants Howard Chaplin and Harriet Chaplin hereby certifies that a true copy of the Notice of Appeal in the above referenced case has been served upon

Respondent by depositing same in the United States Mail, postage prepaid, this 4th day of December, 2012, addressed to her attorney of record as follows:

Alysoun M. Eversole, Esquire
Eversole Law Firm, PC
1509 King Street
Beaufort, SC 29902

December 4, 2012



LAW OFFICE OF BRUCE R. HOFFMAN, LLC,
BY: BRUCE R. HOFFMAN,
Attorney for Appellants Howard Chaplin and
Harriet Chaplin
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290