

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 20 2019
SC Court of Appeals

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

*Motion for Leave to file a Rule 60(b) SCRPC proceeding
in the Trial Court for Relief from the Final Judgment
being appealed from on the ground that extrinsic fraud
was used by respondents to obtain the judgment through
the use of perjury by two Officers of the Court.*

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1. Under the Ray Chewning case, both the S.C. Court of Appeals, and the South Carolina Supreme Court have ruled that the concealment of documents coupled with perjury by an officer of the court, (meaning a licensed attorney) and an intent to deceive the court is enough to set aside a final judgment. Chewning v. Ford Motor Co., 346 S.C. 28, 550 S.E.2d 584 (Ct. App. 2001), 354 S.C. 72, 579 S.E.2d 605 (2003).

2. In addition, the Supreme Court Ruled at 354 S.C. page 80, that: "There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court." The Supreme Court went on to explain that any "facially applicable statute of limitations" where extrinsic fraud is involved just does not count.

3. B. Michael Brackett, a licensed S.C. attorney, and attorney for respondents herein, used perjury against appellant Mell Woods, and concealed material documents, with the result being that appellant was denied the right to a jury trial. There was to be a jury trial to start with, but then Brackett labeled appellant Mell Woods, a "trespasser" (or squatter) on the land in question, and went to a magistrate judge and talked the magistrate judge into summarily evicting appellant from land which appellant lawfully occupied for more than ten years under a written mortgage from the former possessor of the land in question. Appellant was never a trespasser and did raise the issue of paramount title at every opportunity. Where the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action,

it is the duty of the court to submit to a jury the issue of title raised by the pleadings. William H. Van Every, Jr. v. Chinquapin Hollow, Inc., 265 S.C. 474, 219 S.E.2d 909 (1975). [The filed answer with the jury demand endorsed, is attached as "Exhibit A"]

4. Appellant Mell Woods is not trying to obtain a ruling from the Court of Appeals concerning any fact issue alleged in the present Motion for leave to proceed in the trial court under SCRCF, Rule 60, it is just that Rule 60 requires that leave be obtained before proceeding in the trial court when an active appeal is in progress; "During the pendency of an appeal, leave to make the motion must be obtained from the appellate court."

5. As to the jury trial issue in a land case, the following is the verbatim wording of the trial court order:

[from page 3 of the Order]

"The second preliminary matter was the election of the Plaintiffs as to which Action they wanted to pursue. The plaintiffs chose to go forward with their second filed Action, the one wherein and whereby they allege the Defendant is a trespasser and should be ejected from the property in question. They chose not to go forward upon the prior Action for eviction."

[the following page is a direct copy of the Order of the court concerning jury trials, and is a continuation of page 3, above, and then part of page 4, of the Order]

The next preliminary matter was the Defendant's Motion for a Jury Trial in the current Notice to Quit Action. He objected to the proceedings going forward as a bench trial citing Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985) so as to avoid waiving his rights. The Defendant has not in fact waived whatever right he may have had to a jury trial as no ruling had been made by the Court as to that issue up to that point. The Court heard the parties concerning this matter, notes that the issue was timely raised by the Defendant, and considers the Defendant protected on the Record. Jury trials are in fact widely

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PAGE 3↑

PAGE 4↓

available in this State for all sorts of cases. However, that right is not absolute and therefore does not apply in every instance. The right to jury trial is available to both sides in eviction matters as it is provided for by Statute. Were this matter going forward as originally filed, the Defendant would have been entitled to a jury trial. However, there is no statutory right to jury trial for an Action to eject a trespasser, which is the current situation. The Magistrate Court Rules make no such provision either. Although the Court has wide discretion in situations wherein a jury trial might prove helpful, the Defendant failed to demonstrate a need for one in the interests of justice or as an aid to the Court for resolution of this case. No valid reason having been presented by the Defendant for a jury trial, the Defendant having failed to demonstrate entitlement to one, the prayer for jury trial was and remains denied.

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6. To be specific about the at least two lies under oath used by Robert Breakfield, and B. Michael Brackett, both South Carolina licensed attorneys when they drew and filed with the Magistrate Court the verified document called: "Application for Notice to Quit Premises" and verified application filed pursuant to S.C. Code Ann. § 15-67-610; lie one is - "During her life estate Reba Hinson leased the lot at 1537 Hinton Road to the Respondent-Trespasser. The terms of the lease agreement are not clear, except that Mr. Woods was to pay rent to Reba Hinson."

The foregoing is a total, and material lie. Breakfield and Brackett left out the part that Appellant Mell Woods had actually purchased the land from Reba Hinson, and is in the process of paying a mortgage on the land in question.

[The mortgage itself is attached as Exhibit "B" and for the Record, Brackett was already in possession of a copy of the mortgage but chose to conceal the document from the Magistrate Court when filing the "Application for Notice to Quit Premises." Exhibit "B" shows without any doubt that Appellant was not a "trespasser" but was making payments under a written mortgage.]

Lie number two is that Brackett and Breakfield included *Elaine H. Hensley*, a deceased person as one of the "parties" to the purported "Application for Notice to Quit Premises" - under South Carolina case law, an *attorney-in-fact* cannot file suit for a dead person, Bunch v. Dunning, 106 S.C. 300, 91 S.E. 331 (1917) and Robert Breakfield knew Mrs. Hensley had died because Breakfield signed the deed of distribution for Mrs. Hensley's property, and knew that her estate had been closed out prior to filing the so-called "Application for Notice to Quit Premises."

7. The verified "Application for Notice to Quit Premises," S.C. § 15-67-610 is attached for ready reference as Exhibit "C" and is the same document filed in the Magistrate Court.

8. There is also on on-point South Carolina case which fits the situation between the parties in the present dispute.

Eller v. Motley (1917), the headnote of which is set out below:

South Carolina Supreme Court, Eller v. Motley, 99 S.C. 20, 82 S.E. 992 (1914) "If William Motley went into possession of the land as a purchaser with a contract to pay a specified sum for a specified amount he would be entitled to a decree for specific performance upon his fully carrying out the terms and conditions of the contract entered into, and would not have been required to have paid the price agreed upon in the lifetime of David Motley. He did not have to pay the purchase price and retain possession ten years after such payment to acquire title. If he purchased the land, went into possession of the same, put valuable improvements thereon, and carried out his contract as to payments, as soon as he fully performed all of his promises and agreements as contracted for between the parties as to the purchase, he would be entitled to a deed. And upon full performance on his part of the terms and conditions of the contract, whether the vendor was alive or dead, he would be entitled to a deed from the heirs at law of the vendor, or the Courts, upon proper showing, would declare him the owner of the land and require a deed to be made. There can be no question that the purchaser of the land upon the payment to the vendor, or his heirs, of the purchase price agreed upon between the parties at the time of contract of sale or any balance due of the purchase price would be entitled to receive a deed; and it can not be maintained that a failure to pay the whole to vendor in his lifetime will defeat the right of purchaser to retain possession. The payment of balance to vendor's heirs will be sufficient, even though they be minors. His Honor was in error in the particulars complained of in exception seven, and this exception is sustained."

Judgment reversed and new trial granted.

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9. The subornation of perjury by an attorney and the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. Where an attorney – an officer of the court – suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud. Chewning v. Ford Motor Company, 354 S.C. 72, 579 S.E.2d 605 (2003).

10. Once attorney Brackett contacted the Magistrate Judge, and it was decided to change the proceeding into one which labeled appellant Mell Woods, a "trespasser" instead of someone legally on the land and paying off a mortgage, then, at that time, appellant was effectively denied the right to a jury trial and a day in court in the proper court, (meaning the circuit court) and never stood a chance in the Magistrate Court. Attorney Brackett accomplished this deed by lying to the court.

11. Appellant Mell Woods asks that the present appeal be held in abeyance, and permission be granted for appellant to file for relief from the judgment under 60(b) SCRPC. If permission is granted, appellant would file a motion in the trial court within 20 days.

Respectfully submitted,

MARCH 14, 2019



Mell Woods

P.O. Box 2603 Lancaster, SC 29721

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State of South Carolina
Chester County

In the Magistrate Court
Rossville District

Number: 2014CV1210400037

Robert H. Breakfield, for
himself and others listed
as "Applicant"

v.

Mell Woods,

Respondent.

Exhibit A

Jury Trial Demanded

Response to the "Application to Quit Premises"

VERIFIED Answer of Respondent is as follows:

1. Paragraph one of the verified application contains lies; Breakfield, the deponent, is NOT the attorney-in-fact for all the "applicants" listed in the caption of this case -- at least one of the applicants has died and Robert Breakfield is not the attorney-in-fact for all of the applicants and in particular one of the dead ones; this is just another example of how Robert

Breakfield commits the crime of perjury on a daily basis and is the same Robert Breakfield who is not worthy of belief by anyone.

2. Paragraph two of the "Application" is not true.
3. Paragraph three of the "Application" is not true.
4. Paragraph four of the "Application" is not true.
5. Paragraph five of the "Application" is false -- the court order referred to was obtained by artifice, lies and perjury.
6. Paragraph six of the "Application" is only partially true, number six leaves out the part that respondent is actually the fee-simple owner of the land in question.
7. Paragraph seven of the "Application" is not true.
8. Paragraph eight of the "Application" is not true.
9. Paragraph nine is only partially true -- the pleader leaves

Pa 2

out the material part that respondent is actually the fee-simple owner of the land in question.

10. Paragraph ten is only partially true -- the court orders referred to were wrongfully decided.
11. Paragraph eleven is not responded to.
12. Paragraph twelve is not true -- the court orders referred to are incorrectly decided because the court orders are based on perjury supplied by an officer of the court.
13. Paragraph thirteen of the "Application" is not true.
14. Paragraph fourteen is not responded to.
15. Paragraph fifteen of the "Application" is not true.

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South Carolina Statute § 15-67-20:

A plaintiff is limited to one, AND ONLY ONE action for "recovery" of real property. SC § 15-67-20 is a statute of repose, or statute of limitation in regard to land suits. A defendant under South Carolina law is not required to have to continually defend attacks on a land title. A plaintiff only gets ONE chance and in this case an "Application" for a "Notice to Quit Premises" is a new case and is not allowed under South Carolina law, and is in fact a guise to try and defeat defendant's common law right to a jury trial.

South Carolina Statute § 22-3-1130:

A South Carolina magistrate does not have jurisdiction of, and cannot hear a proceeding where the title to real estate is involved and the defending party posts the required \$100.00 cost bond and undertaking under SC § 22-3-1120; the defending party in this case, MELL WOODS, hereby swears under oath that the title to the real estate involved herein is contested and will be further contested by use of

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adverse possession, prescription, the English Common Law, and other South Carolina Statutes which involve title to land, and in addition the defending party, Mell Woods, hereby pleads the defense of questionable title; all claims to the land in question asserted by the moving parties are false and have been obtained by perjury and extrinsic fraud upon South Carolina Courts.

The required cost bond and undertaking is attached; wherefore, the defending party, Mell Woods, asks that this action be dismissed.

Respectfully submitted,

this 10 day of December, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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2014CV12104000 37

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

COUNTY OF Chester

IN THE MAGISTRATE'S COURT

Robert Breakfield

PLAINTIFF(S)

BOND UNDERTAKING
AND ORDER

VS.

Mehl Woods

DEFENDANT(S)

Mehl Woods

plaintiff/defendant (circle one) desires to give an undertaking

for the purpose of:

In order to comply with SC § 22-3-1120, defendant will at all times render himself amendable to the process of the court and abide by any judgment; in addition if the plaintiff should decide to continue on in circuit court, defendant will admit service if plaintiff will serve its papers on the Magistrate Judge.

as provided by Section 22-3-1120 Code of Laws (1976), in the amount of \$ 100.00

We, the undersigned sureties, do hereby obligate ourselves, jointly and severally as follows:

Name U.S. Postal Service Name

Mehl Woods

Business Address WASH., D.C.

Business Address P.O. Box 2603
LANCASTER, SC

Amount \$ 100.00

Amount \$ 100.00 29721

M.O. # 22147897050

I declare under penalty of perjury that the foregoing is true and correct.

U.S. Postal Service
M.O.# 22147897050

McIl Woods

(Signature of Surety)

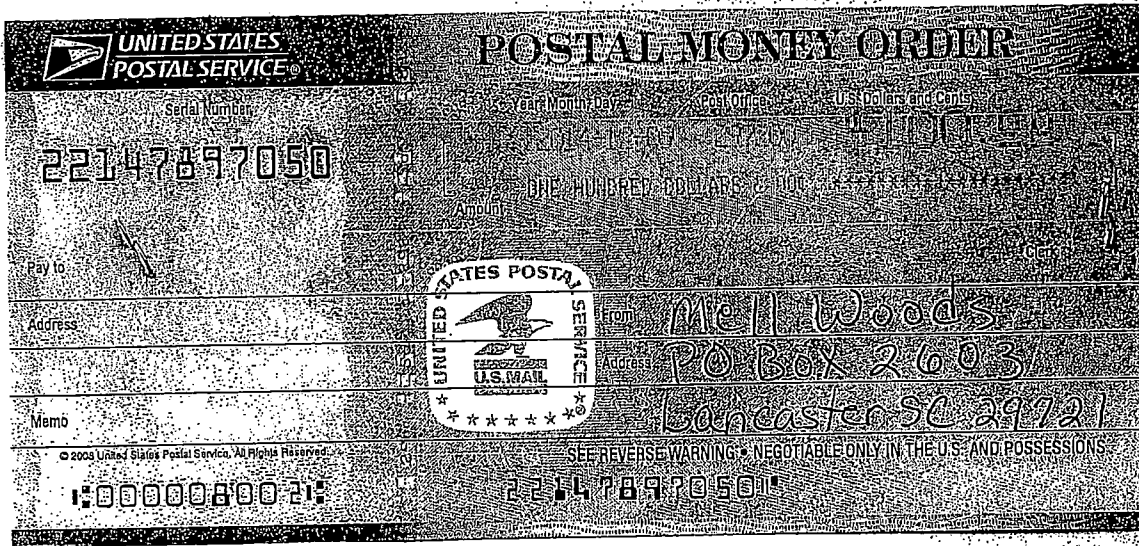
(Signature of Surety)

ORDER

The above undertaking by surety(ies) is hereby approved by this court.

Dated: _____

MAGISTRATE



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VERIFICATION BY DEFENDING PARTY MELL WOODS:

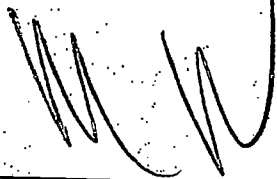
State of South Carolina

In the Magistrate Court

Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, first being duly sworn, and as affiant herein, hereby states upon his oath that affiant has examined the within and foregoing pleading entitled *Response to the Application to Quit Premises*, and UPON HIS OWN PERSONAL KNOWLEDGE, swears that all statements and allegations in the *Response* are correct, and the truth.



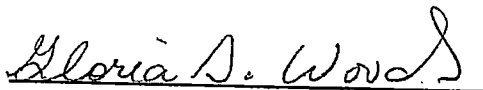
Mell Woods

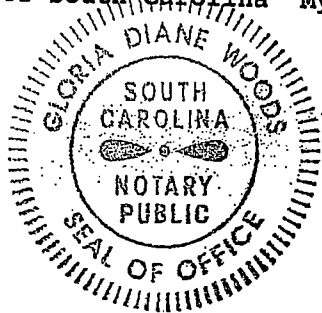
Sworn to, and subscribed before me,

This 10 day of December, 2014.

Gloria D. Woods Notary Public for South Carolina My Comm. Expires

01/08/2018


Gloria D. Woods



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Certificate of Service:

State of South Carolina

In the Magistrate Court

Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the moving parties with a copy of the within and foregoing pleading and supporting documents by placing copies of the same in the U.S. Mail addressed to the counsel of Record for the parties, to wit:

Moses, Koon and Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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Exhibit
B

CHESTER COUNTY, SOUTH CAROLINA

Date: May 07, 2005# 2005

LAND SALES AGREEMENT between REBA P. HINSON and MELL WOODS

Total amount of Contract	\$28,530.00
Credit for prior payment (minus)	3,804.00
due May 06#, 2011 extra payment for land	19,020.00
\$5.00 consideration for this new contract	5.00

\$24,731.00
Remains

To date Mell Woods has paid in \$3,804.00 ground rent on the property described in this contract. He, (Mell Woods) bought the building sitting on my land from Bobby Gardner. Mell Woods can move the building if he wants to. The rent contract was \$951.90 per year. The rental contract for the ten years is now modified; credit against the contract price, in the amount of \$3,804.00 is allowed, and it is now agreed that Mell Woods is buying the land where building is, instead of renting the land. (1537 Hinton Road)

PROMISES BY MELL WOODS

Mell Woods owes Reba P. Hinson the following money:
\$951.00 times ten = \$9,510.00, plus double the amount paid-in \$19,020.00, as a final payment, total of \$28,535.00 for the land. Mell Woods can move the building off if he wants to. Mell Woods has 90 days after May 06, 2011 to finish paying the \$28,535.00 to either Reba P. Hinson her heirs, or assigns. If the total amount is not paid within 90 days all unpaid amounts will start earning 8% per year interest, after August 05, 2011.

DESCRIPTION OF LAND:

The land sold today is shown on the plat of Phillip G. Smith, a registered surveyor, and dated May 13, 2002 -- reference is made to the Smith plat which shows lands of Reba P. Hinson;

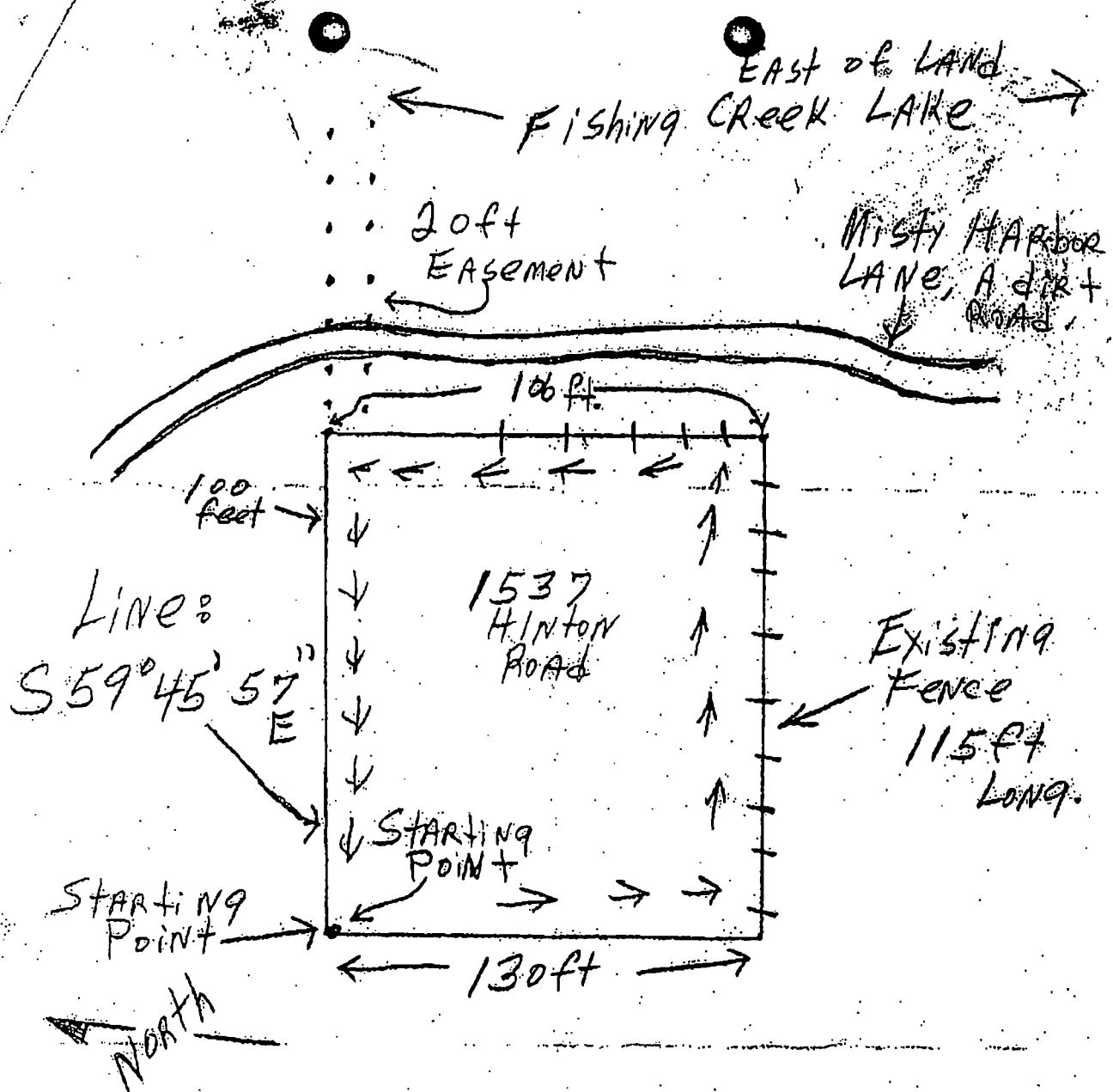
Starting at the dividing line between Tract #2, and Tract #3 at the junction of the line S 59° 45' 57" E and the EAST side of Hinton Road, then turning South for appx 130 feet alongside the East side of Hinton Road to an existing wood fence, then turn east toward Fishing Creek Lake, and go down the existing wood fence appx 115 feet, then turn North along the other existing wood fence and go appx ~~###~~ 106 feet until intersecting with the dividing LINE S 59° 45' 57" E on the plat of Phillip Smith, and Jack Smith Surveying Company, and last go WEST back toward Hinton Road by going along the S 59° 45' 57" E line for appx 100 feet to arrive at the starting place.

All of the described land is coming out of Tract #2 as shown on the May 13, 2002 plat of Phillip Smith. In addition Mell Woods, and assigns, is granted a 20ft. easement to Fishing Creek Lake along the South Side of the extension of line S 59° 45' 57" E. SEE THE ATTACHED DRAWING ON PAGE TWO of this contract for illustration purposes; if there is any variation between the drawing and the above word description, then the words control over the drawing.

Mell Woods is to get the above lot surveyed at his own expense. Mell Woods is hereby put in possession of the described lands as a buyer, and debtor. Mell Woods is no longer a tenant of Reba P. Hinson. The description from the plat, and attached drawing is everything needed for this agreement to sell the land. Mell woods can move the building if he wants to. It is the further condition of this agreement that once the sum promised is paid-in, Mell Woods, or assigns, is the fee-simple owner of the described property without restriction. Any of the eight % interest which may accrue after Aug. 06, 2011 will be due in a lump sum the following Jan 15, 15, any interest not paid on time will incur a one time late fee of fifty dollars. Accrued interest may be collected by court action, with the limitation of four hundred dollars attorney fee per collection. This contract is a sealed instrument. This contract can be assigned to others by either party, or assigns. Mell Woods will have a deed and plat prepared. Reba P. Hinson will sign, and then keep the deed until the money promised has been paid-in.

Reba P. Hinson
SELLER

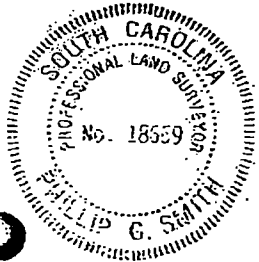
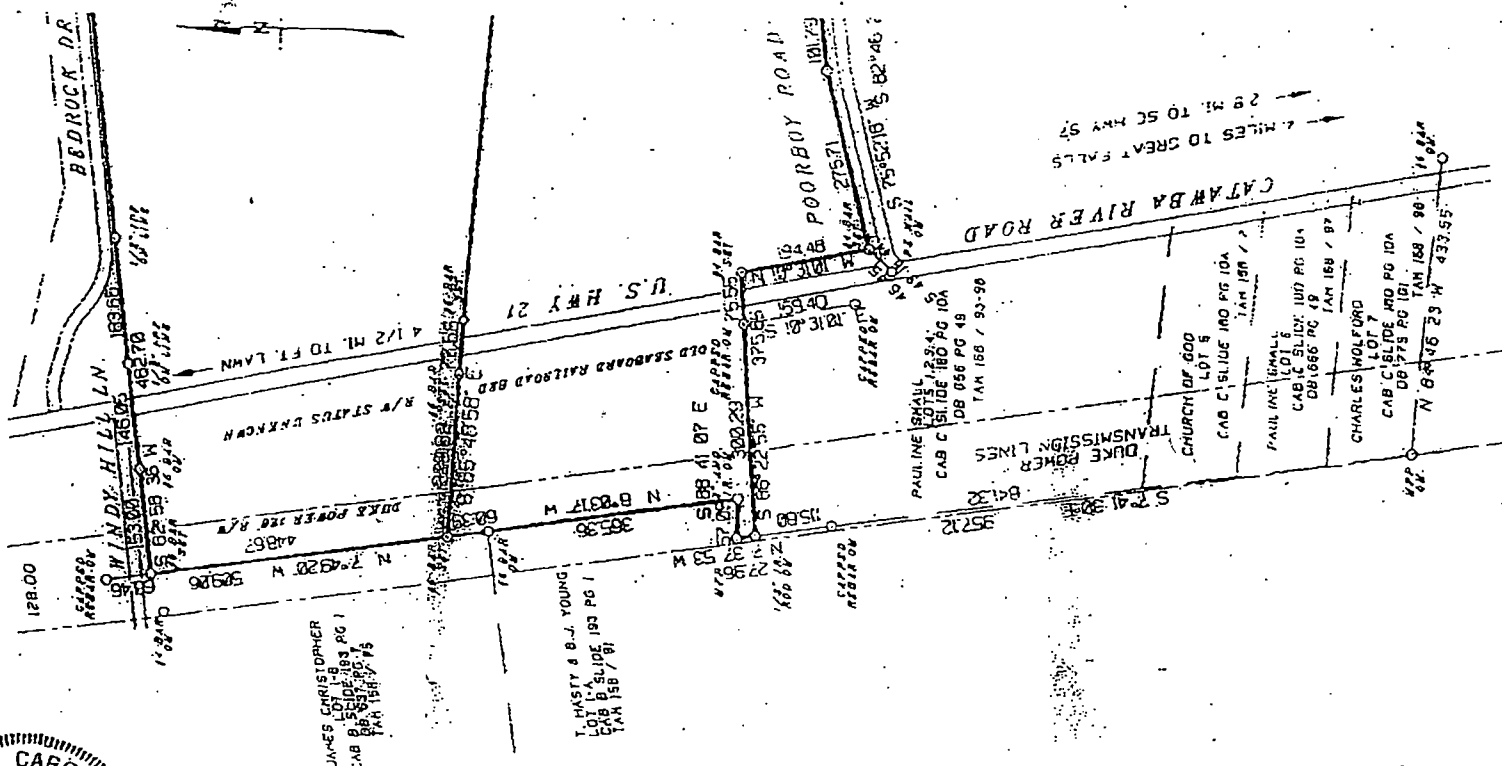
Mell Woods
BUYER



↑ Hinton Road, Paved

ALL LAND comes out of Tract #2, Phillip G. Smith Plat. TOTAL LAND AREA, Less THAN ONE HALF Acre. NOT TO SCALE.

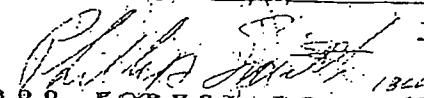
In the case of any inaccuracy, the survey shown herein was made in accordance with the Minimum Standards for the Practice of Land Surveying in South Carolina, and meets the requirements for a Survey as defined by S.C. Code Section 46-1-10.



STATE OF SOUTH CAROLINA
 COUNTY OF CHESTER
 PLAT OF SURVEY FOR

REBA P. HINSON

LOCATED ABOUT 4 1/2 MILES SOUTH OF SC HWY 9 AT FT. LAWN ON BOTH SIDES OF U.S. HWY 21 BEING A PORTION OF THE REBA HINSON LANDS SHOWN AS TRACTS NO. 7 & 8 OF PB "B" PAGE 106. BEING ALL OF TRACT 7 AND A PORTION OF TRACT 8 OF SAID PLAT.

 JACK SMITH SURVEYING 800 FOREST DR. (803) 283-2646 LANCASTER SOUTH CAROLINA		©2002js
DRAWN BY PS	SCALE 1" = 240'	TAX MAP P/O 158 / 3
DATE 13 MAY 2002		P/LB: HINSONREBA

MARY DAVID TIBBY

OLIVIA MILKIE
1496.72 CABE 56 IDE 37 PD
08 780 PG 188
TAM 169 7 20

N 82°54'13" E

N 81°22'58" E

TRACT 3
32.857 AC.

1752.68
S 65°48'58" E

TRACT 2
32.857 AC.

161.14
253.47
72.82
137.89
N 86°33'59" W
N 77°31'33" W
N 70°40'52" W
N 62°23'30" W
485.05
N 53°42'12" W

REBA HINSON
REMAINDER TRACT B PB '8' PG 106

ANTON ROAD

BOAT LANDING

FISHING CREEK
RESERVOIR

MISTY HARBOR LN.
249.65
59°45'57"

OLIVIA MILKIE
CAB C SLIDE 32
08 844 PG 106
08 814 PG 106
104 158 PG 106

219.40
S 88°30'08" E

N 13°47'30" W
S 5°27'18" E
S 4°35'43" W
S 82°21'5" W
S 82°21'5" W

S 3°15'03" E
488.86
192.30
S 10°08'10" E

482.15
N 53°23'05" W

N 39°06'35" W
192.58
24.34
S 10°18'14" W
18.57
S 3°20'00" W
S 57°33'27" W
N 15°02'43" E

PD

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Mell Woods, affiant herein, after being first properly
deposed, states upon oath, and upon personal knowledge, the
following facts to wit:

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(a) concerning the land at issue in this lawsuit;

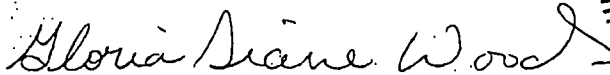
I, Mell Woods, did possess the land in question, starting on May 07, 2005 when I was placed in possession of the land by Mrs. Reba Hinson, the occupant of the land during year 2005, and was in continuous possession of the land through at least May 08, 2015; the land in question is the same land described in the land contract between Mrs. Reba Hinson, and Mell Woods, dated May 07, 2005, and the land contract is in the Record of this case; (a hand-drawn map of the land is in the Record also) I, Mell Woods stayed on the land for ten years, and did not hide the fact that I did occupy the land in question for ten years; the possession was often hostile as some of the Hinson heirs would come by and offer to physically assault me for occupying the land; I would always tell the Hinson heirs that they could not scare me off of land that I had purchased, and that the land was my land and not theirs and they could not trespass on the land or use the fishing dock and float attached to the land or cross-over the land or cut wood off of the land; and whenever the Hinson heirs would tear down portions of the fencing containing the land, I would repair the fencing within two to three days; all of this went on for the ten years that I occupied the land;

Affidavit made this the 10th day of October, 2016.

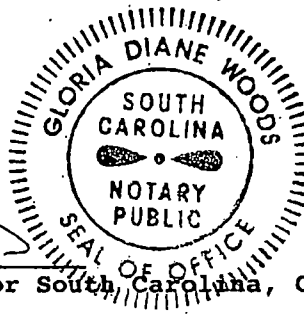
Further, affiant saith not.


Mell Woods, affiant

Sworn to, and subscribed before me,
October 10, 2016,



Gloria Diane Woods, Notary Public for South Carolina, Commission Expires January 08, 2018.



STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MAGISTRATE'S COURT

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

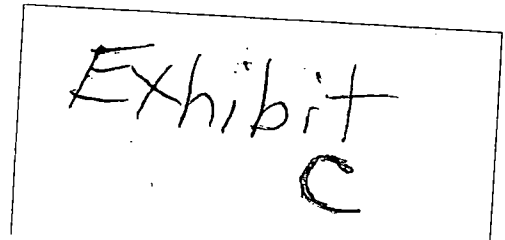
Application for Notice to Quit Premises

Applicant,

v.

Mell Woods,

Respondent-Trespasser.



-
1. This verified application is filed pursuant to S.C. Code Ann. § 15-67-610 seeking the issuance and service of a Notice to Quit Premises requiring the above-captioned respondent-trespasser to vacate and relinquish possession to the Plaintiff(s) of the real property known as 1537 Hinton Road, Great Falls, SC, located in Chester County. The undersigned deponent is the personal representative of the estate of Reba Hinson and the attorney-in-fact for the above-named owners of the subject property.
 2. Plaintiffs were remaindermen to the life estate held by Reba Hinson in and to certain real property on Fishing Creek Lake in Chester County, including the lot identified and known as 1537 Hinton Road, Great Falls, SC.
 3. The property at 1537 Hinton Road was part of larger tract owned by Reba Hinson's spouse, Levie Hoyt Hinson, containing 97 acres, more or less, that is identified as Chester County TMS# 158-0-0-003.

4. The Last Will and Testament of Levie Hoyt Hinson dated April 21, 1977 and probated in the Chester County Probate Court, devised to his spouse Reba Hinson a life estate in all real property owned by Levie Hoyt Hinson with the remainder interest to pass to their bodily heirs upon the termination of the life estate.
5. By Order of the Chester County Probate Court dated October 15, 2007, it was determined that the above-named persons are the bodily heirs to whom title to the real estate passed upon the death of Reba Hinson on January 3, 2007. A copy of said Order is attached hereto and incorporated herein as **Exhibit A**.
6. During her life estate Reba Hinson leased the lot at 1537 Hinton Road to the Respondent-Trespasser. The terms of the lease agreement are not clear, except that Mr. Woods was to pay rent to Reba Hinson. Mr. Woods was and is the owner of the improvement/residence located on the lot now owned by the Applicants.
7. When Reba Hinson died, her life estate terminated by operation of law, and the lease agreement with Mr. Woods immediately terminated by operation of law.
8. The remaindermen successors to the property immediately became the fee owners of the property, including the lot at 1537 Hinton Road.
9. Since the death of Reba Hinson, Mr. Woods has denied that he is a tenant and has affirmatively alleged that he holds fee title to the lot at 1537 Hinton Road. In his verified Answer filed in this Court in 2011CV1210100148 he alleged: "there is no landlord-tenant relationship between Defendant and the purported landlords [Second Defense- Count I]. . . Mrs. Hinson held a fee estate, and full ownership estate, not a 'Life Estate' as stated [Third Defense] . . . It is not true that the will in question [Levie Hinson last will] created a 'Life

Estate' [Third Defense] . . . as stated earlier, Mrs. Hinson had full ownership of all of the property formerly owned by her husband, Mr. Levie Hoyt Hinson, the agreement defendant [Mr. Woods] had with Mrs. Hinson was a type of land contract, and when fulfilled, defendant will be the owner of the land where the building sits [Third Defense] . . .”

10. Mr. Woods has heretofore participated in various legal proceedings in which he claimed fee ownership of 1537 Hinton Road. He attempted to insert himself into the administration of Reba Hinson's probate estate in an effort to cause a certain last will to be probated in lieu of other last wills. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit B**. The Court of Appeals' unpublished opinion is attached as **Exhibit C**.
11. Applicants herein commenced an eviction action to have Mr. Woods ejected from the property. Mr. Woods claimed that he was not a tenant and that the magistrate court therefore had no jurisdiction over the proceeding. Selected portions of his Answer in the eviction case are set out in paragraph 9 above. The appeal in the eviction case involved pretrial procedural matters and not substantive findings and conclusions.
12. Most notably, Mr. Woods commenced an action to have Levie Hinson's last will construed, alleging therein that Levie Hinson's last will devised fee ownership to Reba Hinson (not a life estate) and that Reba Hinson had conveyed, or contracted to convey, fee title to 1537 Hinton Road to Mr. Woods. He alternatively claimed title by adverse possession. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit D**. The Court of Appeals' unpublished opinion is attached as **Exhibit E**.

13. Having admitted under oath that his possession of the property at issue since the death of Reba Hinson was as the alleged owner and not as a tenant, and having failed in his attempts to prove ownership of the fee as evidenced by the aforementioned court orders, and having refused to vacate the property at the demand of the Applicants, Mr. Woods is now a trespasser. His present possession of the land known as 1537 Hinton Road is without title, and is without the consent of the Applicant-owners.
14. Applicants admit that Mr. Woods is the owner of the improvement on the property at issue, and Applicants make no claim to the improvement, unless Mr. Woods fails or refuses to remove the improvement within the time the court determines to be reasonable.
15. Applicant is informed and believes that he is entitled to the relief provided in and by S.C. Code Ann. § 15-67-610, namely to have the magistrate serve a notice on the Respondent to quit the premises.


November 13, 2014



B. Michael Brackett
Moses & Brackett, PC
P.O. Box 100261
Columbia, Sc 29202
803.461.2312
Attorney for Applicant


Verification

_____ Personally appeared before me Robert H. Breakfield, Esquire, who being first duly sworn on oath, says that he, in his capacity as attorney-in-fact, is the Applicant in the foregoing action and has read the allegations in the foregoing Application, and the same are true of his own knowledge, except those matters stated on information and belief, and as to those matters he believes them to be true.



Robert H. Breakfield, Esquire

Sworn to before me this 3rd day
of November, 2014.



Notary for South Carolina
My Commission Expires: 1/16/2019

CERTIFICARE OF SERVICE

COURT OF APPEALS OF SOUTH CAROLINA

Case Number 2016-002016

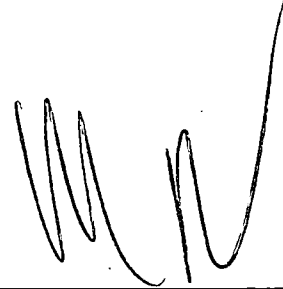
Breakfield v. Woods

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MAR 20 2019
SC Court of Appeals

I hereby certify that I have served the within and foregoing Motion for leave to file a Rule 60(b) SCRPC proceeding in the trial court by method of placing a copy of the motion with Exhibits in the U.S. Mail with proper postage addressed to Mr. B. Michael Brackett at his current address of record.

This 14 day of March, 2019.



Mell Woods

P.O. Box 2603
Lancaster, S.C. 29721

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

Cover Letter

March 14, 2019

Clerks Office, SC Court of Appeals

DEAR SIR, or Madam:

Please file the attached motion with the other papers in the above case.

The motion fee is included, and attached.

Thanks, Mell Woods

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MAR 20 2019

SC Court of Appeals



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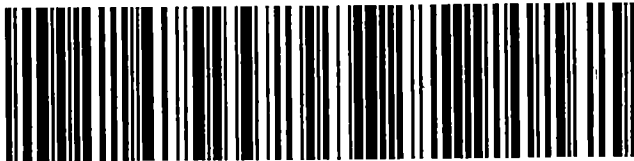
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