

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Hon. Edgar W. Dickson, Judge

Case No. 2018-CP-07-1559

RECEIVED
OCT 07 2019
S.C. SUPREME COURT

Charles E. Houston, Jr.

Appellant

v.

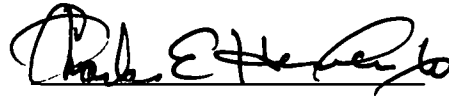
Dean B. Bell, individually and
Law Offices of Dean B. Bell, LLC and
B. Hammel Properties, LLC.

Respondents

NOTICE OF APPEAL

The above named Appellant appeals the separate Orders of the Honorable Edgar W. Dickson., Judge dated September 3, 2019 and filed on September 4, 2019 granting Defendant's B. Hammel Properties LLC Motion for Summary Judgment and from the Order signed September 3 2019 and filed on September 4, 2019; granting Defendant's Dean B. Bell individually and Law Offices of Dean B. Bell, LLC's Motion for Summary Judgment . Appellant was served with written notice of entry

of the September 4, 2019 Order on September 5, 2019 and received both on September 9, 2019.



Charles E. Houston Jr.
100 Shady Brooke Walk
Fayetteville, Georgia 30214
843-684-0211

Appellant, *Pro Se*

Other Counsel of Record:

W. Cliff Moore, III
Adams and Reese, LLP
PO Box 2285
Columbia, SC 29202

And

Thomas C. Taylor, Esquire
Law Offices of Thomas C. Taylor, LLC
PO Box 5550
Hilton Head Island, SC 29938

And

Dean B. Bell, Esquire
Law Offices of Dean B. Bell, LLC
48 Pennington Dr Suite C
Bluffton, SC 29910

October 3, 2019
Fayetteville, Georgia

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Charles E. Houston, Jr.

Appellant

v.

Dean B. Bell, individually and
Law Offices of Dean B. Bell, LLC and
B. Hammel Properties, LLC.

Respondents

CERTIFICATE OF SERVICE

The undersigned, Charles E. Houston, Jr., hereby avers that he is the Appellant -plaintiff in the action herein and that a true an accurate copies of the Plaintiff's **Notice of Appeal** in the above entitled action has been served upon all counsel of record and the Clerk of Court for Beaufort County, SC by placing same

in the United States Mail with sufficient first class postage affixed thereto and addressed as follows:

W. Cliff Moore, III
Adams and Reese, LLP
PO Box 2285
Columbia, SC 29202

And

Thomas C. Taylor, Esquire
Law Offices of Thomas C. Taylor, LLC
PO Box 5550
Hilton Head Island, SC 29938

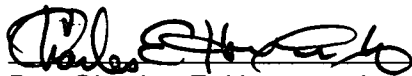
And

Dean B. Bell, Esquire
Law Offices of Dean B. Bell, LLC
48 Pennington Dr Suite C
Bluffton, SC 29910

And

Hon. Jerri Ann Roseneau, Clerk
Office of the Clerk of Courts for Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901

RECEIVED
OCT 07 2019
S.C. SUPREME COURT


By: Charles E. Houston Jr.

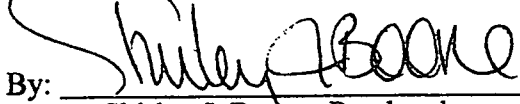
This 3rd Day of October 2019
Fayetteville, Georgia

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CIVIL ACTION NO.: 2018-CP-07-01559
)	
CHARLES E. HOUSTON)	
)	
Plaintiff)	
)	
v.)	CERTIFICATE OF SERVICE
)	
DEAN B. BELL, Individually, LAW)	
OFFICES OF DEAN B. BELL, LLC, and)	
B. RICHARD HAMELL PROPERTIES,)	
LLC,)	
)	
Defendants.)	

I, Shirley J. Boone, Paralegal to The Law Office of Dean B. Bell, LLC, hereby certify that a copy of the *Order Granting Defendants Dean B. Bell's and The Law Office of Dean B Bell's Motion for Summary Judgment* has been served as follows: by electronic delivery and/or by depositing same in the United States Mail, postage pre-paid and properly addressed, as follows:

Charles E. Houston
 100 Shady Brook Walk
 Fayetteville, GA 30214
charleshouston@aol.com

THE LAW OFFICE OF DEAN B. BELL, LLC

By: 
 Shirley J. Boone, Paralegal
 The Law Office of Dean B. Bell, LLC
 101 Brevard Court
 Savannah, Georgia
 T: 912-239-6160/ F:912-452-1222

September 5, 2019
 Savannah, Georgia

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles E. Houston, Jr.

Plaintiff,

v.

Dean B. Bell, individually;
Law Offices of Dean B. Bell, LLC; and
B. Hammell Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-07-01559

**ORDER GRANTING DEFENDANTS
DEAN B. BELL'S AND THE LAW
OFFICE OF DEAN B. BELL'S
MOTION FOR
SUMMARY JUDGMENT**

The Motion for Summary Judgement of the Defendants Dean B. Bell, individually, and The Law Office of Dean B. Bell, LLC (“Bell Defendants”) filed on April 3, 2019 came before me for hearing on June 10, 2019. Dean B. Bell was present at the hearing representing himself and The Law Office of Dean B. Bell, LLC. W. Cliff Moore, III and Thomas C. Taylor were present as counsel for B. Hammell Properties, LLC (“Hammell Properties”). The Plaintiff appeared *pro se*.

This action is an attempted collateral attack on an Order entered in a separate matter that was filed July 15, 2013. In that matter, *Cornelia H. Hall, et al v. Charles E. Houston, Jr.*, Civil Action Number 2011-CP-07-05141 (the “Partition Action”) the Plaintiff Charles E. Houston’s (“Houston”) sisters secured an Order that partitioned, by private sale, real property located on Hilton Head Island. The Order which the Plaintiff seeks to attack in this matter ordered, among other things, that the property in that matter be advertised and sold with the proceeds distributed in accordance with specific directives. Hammell Properties, LLC purchased the property in accordance with the terms of the Order.

In this action, Houston alleges that the trial court in the Partition Action lacked jurisdiction; the trial court’s decision in the Partition Action was contrary to previous orders entered in the Partition Action; the decision in the Partition Action violated Houston’s due process rights; and the relief awarded in the Partition Action was beyond the authority of the trial judge. Houston requests that this Court set aside the sale, reinstate his undivided ownership interest, put him back in possession of the property, and award Houston

damages against the Bell Defendants and Hammell Properties for the wrongfully taking the property from him.

In their motion for Summary Judgment, the Bell Defendants argue that there is no genuine issue of material fact raised by Houston's pleadings or the facts as demonstrated through voluminous exhibits included in their Motion and Supporting Memorandum along with the Motion for Summary Judgment filed by Hammell Properties, most of which are included in the Court's file in the Partition Action, and that, as such, the Bell Defendants are entitled to Summary Judgment as a matter of law.

Based on the pleadings filed in this matter, the submissions of counsel in support of the motion, the submissions of Houston opposing the motion, arguments of counsel and applicable law, I find and conclude as follows:

FINDINGS OF FACT

1. Cornelia H. Hall ("Hall"), Jeanne H. Hampton ("Hampton"), Mary A. Houston ("M. Houston"), and Houston jointly owned property on Hilton Head Island that is commonly referred to as 31 Marshland Road (the "Subject Property").

2. On December 7, 2011 Dean B. Bell ("Bell"), in his capacity as attorney for Hall, Hampton and M. Houston, (also referred to as the "Partition Plaintiffs") filed an action against Houston seeking the partition by sale of the Subject Property.

3. Houston appeared pro se in that matter and filed his Answer.

4. On June 4, 2012, Bell, on behalf of the Partition Plaintiffs, filed a Motion for Order of Reference and a Motion for Summary Judgment in the Partition Action with a Certificate of Mailing signed by Bell's paralegal indicating service of those motions on Houston by mail on June 1, 2012. Houston claims that he did not receive a copy of the Motion for Order of Reference.

5. The Court in the Partition Action scheduled a hearing on the Motion for Order of Reference and the Motion for Summary Judgment for August 10, 2012. Despite Houston's claim that he did not receive a copy of the Motion for Order of Reference, he attended the hearing. At the scheduled hearing, the Court heard discovery motions and the Motion for Order of Reference. At the time of the hearing, Houston made an oral Motion to Dismiss the Complaint of the Partition Plaintiffs. By Order dated August 20, 2012 and

recorded September 4, 2012 (the "Order of Reference"), the Court granted the Motion for Reference, referring the matter to the Master in Equity for Beaufort County and provided time for the Partition Plaintiffs to amend their Complaint. The Court did not hear the Summary Judgment Motion.

6. Houston alleges that the Order of Reference made the determination that any partition of the Subject Property would be by a public auction. The Order of Reference does not contain the determination suggested by Houston.

7. Houston also claims that, at the August 10, 2012 hearing, the Court ruled that the Partition Plaintiffs could amend their Complaint, but they were restricted on what they could allege in that Amended Complaint. Houston did not believe that the Partition Plaintiffs could pursue claims for an accounting on rents, taxes and "other sundry items", and were restricted to pursuing partition by public sale. The Order of Reference does not restrict what the Partition Plaintiffs were able to allege in their Amended Complaint.

8. The record indicates that Houston was served with the Order of Reference.

9. Bell, in his capacity as attorney for the Partition Plaintiffs, filed an Amended Complaint in the Partition Action on October 4, 2012. The Amended Complaint included claims against Houston for rent and an action for contribution for taxes, insurance and other expenses associated with maintenance of the Subject Property. The Amended Complaint also specifically alleged that the partition sale of the Subject Property should be a private sale secured through the use of private real estate agent.

10. Houston responded to the Amended Complaint with an Answer dated November 15, 2012 that specifically denied the Partition Plaintiffs' allegations concerning Houston's responsibility for rent, taxes, insurance and other expenses associated with the maintenance of the Subject Property. Houston also denied that the partition should be by private sale.

11. The Master in Equity for Beaufort County conducted the trial in the Partition Action on May 22, 2013. Houston was present at the trial representing himself.

12. On June 24, 2013, Bell communicated with the Master in Equity for Beaufort County by electronic mail requesting a decision by the Master in Equity. The electronic mail shows that Bell sent Houston a copy of the communication, but Houston claims that the address used was the wrong address.

13. The Master in Equity responded to Bell's June 24, 2013 electronic mail on the same date asking Bell to prepare a proposed order. The Master in Equity copied Houston on that communication to the same address Houston claims is incorrect.

14. Bell presented a proposed order to the Master in Equity on July 9, 2013 by electronic mail and provided a copy to Houston at the same address Houston claims to be incorrect.

15. The Master in Equity executed a Final Order in the Partition Action on July 15, 2013 and the Clerk of Court for Beaufort County recorded it on July 19, 2013 (the "Final Order").

16. The Final Order provides, among other things,

- a. For partition by private sale to be managed by Hall through a real estate broker;
- b. That Houston owed the Partition Plaintiffs a sum of money for his failure to contribute to the cost of hazard insurance on the Subject Property;
- c. That amounts paid by the Trustees for the Houston-Patterson Educational Trust for property taxes would be refunded to those Trustees from the proceeds of the partition sale;
- d. That a portion of the proceeds from the partition sale due to Houston would be paid to the Partition Plaintiffs as rent owed by Houston for use of the Subject Property as his law office and rent owed from a tenant that Houston allowed to occupy the Subject Property; and
- e. That attorney fees to pay Bell for a portion of the attorney fees incurred for the partition action would be paid from the portion of partition sale proceeds to which Houston was entitled.

17. Houston filed a Motion for Reconsideration of the Final Order on July 30, 2013 that challenged the Final Order on the following grounds:

- a. Bell submitted a proposed order to the Master in Equity in *ex parte* communications without being requested to submit such a proposed order;
- b. The Master in Equity erred in allowing testimony concerning an accounting from Houston, conversion and partition by private sale because those claims had been dismissed by the Order of Reference and the Court ruled that the

sole cause of action by Partition Plaintiffs was an action for partition by public sale;

- c. The Master in Equity failed to consider the Subject Property to be “heirs title”;
 - d. The Master in Equity lacked jurisdiction concerning issues relating to contribution among heirs to decedent’s estate; and
 - e. The finding of attorney’s fees to be paid to Bell was improper because the Master in Equity should not have ruled in favor of the Partition Plaintiffs.
18. The Court denied Houston’s Motion to Reconsider on September 11, 2013.
 19. On September 23, 2013, Houston served his Notice of Appeal of the Final Order.
 20. Houston did not pursue the appeal resulting in its dismissal and the matter was remitted to the circuit court on March 10, 2014.
 21. On June 23, 2015, Hall made, executed and delivered a General Warranty Deed conveying the Subject Property to Hammell Properties pursuant to the authority given to Hall in the Final Order (the “Partition Deed”). Hammell Properties paid Three Hundred Eighty Five Thousand and 00/100 Dollars (\$385,000.00) for the Subject Property.
 22. On July 1, 2015, Todd E. Houston, in his capacity as Trustee of the Houston-Patterson Educational Trust, filed an action against M. Houston, in her capacity as a Trustee the same Trust, Hall (individually), and Wells Fargo Bank alleging, among other things, breach of trust, and conspiracy, embezzlement (the “Trust Action”). Todd E. Houston (“T. Houston”) is Houston’s son and Houston served as attorney for T. Houston in the Trust Action. Houston was also a co-trustee of the Houston-Patterson Educational Trust. The allegations in the Trust action concerned M. Houston’s and Hall’s handling of a payment due to the Trustees pursuant to paragraph 9 of the Final Order.
 23. On January 5, 2018, T. Houston filed a complaint against Bell with The South Carolina Supreme Court, Commission on Lawyer Conduct accusing Bell of embezzlement, the misappropriation of client funds, intentionally disobeying the Final Order, fraud and deceit. Houston assisted T. Houston in the preparation of his complaint letter against Bell. The Commission investigated and dismissed the complaint.

24. The parties settled the Trust Action on February 12, 2018. Houston, in his capacity as a Trustee of the Trust, was a party to the settlement.

25. Subsequent to the settlement but within the time prescribed by the Rules, T. Houston, with Houston's assistance, filed a request for a Full Panel Review of the Commission on Lawyer's Conduct's decision to dismiss T. Houston's complaint despite already being in receipt of the funds T. Houston alleged Bell misappropriated from the sales proceeds in violation of the Final Order. The subsequent Full Panel Review confirmed the Commission's findings and the complaint remained dismissed.

26. On May 22, 2018, Hammell Properties made executed and delivered a Title to Real Estate conveying the Subject Property, along with other real property, to DMS Funding I, LLC. DMS Funding I, LLC paid Hammell Properties One Million Two Hundred Forty Two Thousand and 00/100 Dollars (\$1,242,000.00) for several parcels of real property, which included the Subject Property.

27. Houston filed his Complaint in this action on July 31, 2018. The Complaint sets forth seven causes of action as follows:

- a. A collateral attack on the Final Order challenging the jurisdiction of the Master in Equity based on the allegation that there was no Order of Reference to the Master in Equity (the "First Cause of Action");
- b. A challenge that the Final Order was inconsistent with the previous rulings by the Court in the Partition Action (the "Second Cause of Action");
- c. Allegations of due process violations by the Court for ignoring the law of the case and against Bell for *ex parte* submissions of unsolicited proposed orders to the Master in Equity (the "Third Cause of Action");
- d. A collateral attack on the Final Order as exceeding the jurisdictional and statutory powers of a court of equity in South Carolina (the "Fourth Cause of Action");
- e. An action to determine that the Partition Deed did not convey Houston's interest in the Subject Property to the Defendant because the Master in Equity did not have the authority to authorize Hall to transfer Houston's interest in the Subject Property as set out in the Final Order (the "Fifth Cause of Action");

- f. An action for wrongful ouster against Bell and Bell's law firm (the "Sixth Cause of Action"); and
 - g. An action to recover damages for waste to the Subject Property and theft of personal property that Houston failed to remove from the Subject Property (the "Seventh Cause of Action")
28. The Third Cause of Action was not made against Hammell Properties.

CONCLUSIONS OF LAW

29. Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn therefore, must be viewed in the light most favorable to the nonmoving party. *BPS, Inc. v. Worthy*, 362 S.C. 219, 325, 608, S.E.2d 155, 158 (Ct. App. 2005). All ambiguities, conclusions, and inferences rising from the evidence must be construed most strongly against the moving party. *Id* at 325, 608 S.E.2d at 159. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Bennet v. Investors Title Ins. Co.*, 370 S.C. 561, 569, 635 S.E.2d 660, 664 (Ct. App. 2006). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by 'showing' --that is, pointing out to the [trial] court --that there is an absence of evidence to support the nonmoving party's case." *Id.* (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). "The moving party need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" *Id.* (quoting *Celotex*, 477 U.S. at 323); see also *Richardson v. State-Record Co.*, 330 S.C. 562, 499 S.E.2d 822 (Ct.App.1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

30. Houston alleges that there was no Order of Reference. The file maintained by the Clerk of Court for Beaufort County on the Partition Action contains the Order of Reference that directly contradicts Houston's allegation. The records submitted in this matter confirm Houston was served with that Order of Reference.

31. Further, Houston voluntarily and intentionally participated in the Partition Action after it was referred to the Master in Equity. He participated in the trial, filed a motion for the Master in Equity to reconsider the Final Order, and initiated the process to appeal the Master in Equity's Final Order – all without a challenge to the jurisdiction of the Master in Equity. Through this participation, Houston voluntarily and intentionally abandoned his right to challenge the jurisdiction of the Master in Equity. *See, Spur at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015).

32. As to Houston's claim that the Master in Equity lacked jurisdiction in the Partition Action, there is no genuine issue of material fact. The Master in Equity had jurisdiction pursuant to the Order of Reference.

33. As to Houston's claim that he was denied due process, there is also no issue of material fact. The Order of Reference did not restrict the Master as alleged by Houston and moreover Houston raised those issues previously in his Motion for Reconsideration, which was denied and followed by his Notice of Appeal. Those undisputed facts confirm that Houston received the prior Orders and had full and fair opportunity to challenge any findings and did in fact do so. Each of the challenges made by Houston were filed timely confirming his own timely receipt of the challenged orders. Those orders also confirm that Houston was present at and participated in each of the hearing related to those orders. As a matter of law, Houston was not deprived of any due process rights.

34. The Plaintiff's Fourth, Fifth, Sixth, and Seventh Causes of Action are rearranged allegations of the prior causes of action which attempt to argue the same points asserted in the First, Second, and Third Causes of action and for the same reasons set forth herein do not set forth any genuine issues of material fact. The Master had jurisdiction over this matter, and after a hearing in which Houston appeared, issued a very thorough Final Order which was served on Houston, who then filed his Motion for Reconsideration raising the same arguments he now asserts in this action. After Houston's Motion to

Reconsider was denied, he filed his Notice of Appeal which was dismissed for failure to prosecute, effectively and forever ending those claims. There is no genuine issue of material fact as to any of Houston's claims.

35. The claims made in Houston's complaint are also barred by the statute of limitations. While challenges to final judgments may be handled by motion pursuant to Rule 60, SCRCPP, collateral attacks in a separately filed action are also appropriate. Rule 60(b), SCRCPP, *See, e.g., Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct. App. 1988).

36. The time for challenges pursuant to Rule 60, whether by motion or by collateral attack in a separate action, are set out in that rule. *Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct. App. 1988). Challenges to a final order or judgment for the reasons set out in Rule 60(b)(1), (2), and (3) must be filed "not more than one year after the judgment, order or proceeding was entered or taken." Efforts to set aside a final order or judgment for reasons detailed in Rule 60(b)(4) and (5) must be made within a "reasonable time".

37. Houston filed the Complaint in this action four (4) years, four (4) months and twenty-one (21) days after the Court of Appeals issued the Remittitur ending Houston's appeal of the Final Order. If Houston's claims are pursuant to Rule 60(b) (1), (2), or (3) the date of the filing of the Complaint is well beyond the one year required for challenges to be made under those provisions of Rule 60(b).

38. Houston offers no reason for the delay in filing this collateral attack on the Final Order. His Complaint filed on July 31, 2018 merely repeats the challenges he made almost five (5) years earlier when he filed his Motion to Reconsider the Final Order on September 11, 2013. The length of the delay, coupled with a lack of explanation for the delay and Houston's conduct following the Final Order – the Motion to Reconsider, the appeal, the Trust Action, and the Complaint to the Commission on Lawyer Conduct- allow this Court to determine that, as a matter of law, Houston's claims under Rule 60(b)(5) are time barred. A four (4) year delay in the filing of a Rule 60(b), SCRCPP Motion to set aside a partition action based on fraud has been determined to be an unreasonable time. *Perry v. Heirs at Law & Distributees of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003). In *McDaniel v. United States Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996), the court upheld a special referee's decision that a Rule 60(b)(4) motion was untimely when made four years after the judgment. ("The special referee's

decision that McDaniel's motion was untimely after nearly four years is not an abuse of discretion, especially since McDaniel participated in the settlement, received substantial benefits from it, and utilized § 38-77-940 as the basis for a cause of action in his 1989 complaint.”). The court of appeals has also held that an 18 month delay was unreasonable under Rule 60(B)(4) and (5) - *Smith Cos. v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993) (“The record reveals no justifiable reason to excuse Hayes's delay in seeking to set aside the February 23d judgment. Relief from judgment under Rule 60 should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion.”).

39. Our courts have recognized the inherent power of a court of equity to set aside its judgments. *See Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct. App. 1988). In upholding that inherent power, courts have held that a judgment may be set aside on the ground of fraud only if the fraud is "extrinsic" and not "intrinsic." *Hagy v. Pruitt (In re Pruitt)*, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000) (“[C]ourts have the inherent authority to set aside a judgment on the grounds of extrinsic fraud in spite of any facially applicable statutes of limitation.”); *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 609-610 (2003). “There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court.” *Chewning*, 579 S.E. 2d at 609-610.

40. Extrinsic fraud is “fraud that induces a person not to present a case or deprives a person of the opportunity to be heard...” *Chewning*, 579 S.E.2d at 81. In his Complaint, Houston specifically alleges extrinsic fraud. The conduct that he describes as extrinsic fraud is the *ex parte* communication Bell allegedly had with the Master in Equity. However, Houston does not allege that those communications induced Houston not to present his case or deprived him of the opportunity to be heard. To the contrary, Houston appeared and argued this very point to the Master in Equity in his Motion to Reconsider.

41. Houston has offered no reason for which he can collaterally attack the Final Order that is not time barred. Accordingly, as a matter of law, the statute of limitations defense is a separate and independent basis for granting the summary judgment to The Bell Defendants on all of Houston’s claims.

IT IS THEREFORE ORDERED THAT there is no genuine issue of any material fact on the claims raised by Houston against Dean B. Bell and/or The Law Office of Dean B. Bell, and therefore Dean B. Bell and/or The Law Office of Dean B. Bell, are entitled to judgment entered in their favor on all of the claims asserted by Houston against Dean B. Bell and/or The Law Office of Dean B. Bell, as a matter of law. This is a judgment in favor of Dean B. Bell and/or The Law Office of Dean B. Bell, on the whole matter and denying all of the relief that Houston requested against Dean B. Bell and/or The Law Office of Dean B. Bell. This Order ends the Houston claims against Defendants Bell.

AND IT IS SO ORDERED.

Edgar W. Dickson
Presiding Judge

_____, SC

_____, 2019



Beaufort Common Pleas

Case Caption: Charles E Houston Jr VS Dean Bell , defendant, et al
Case Number: 2018CP0701559
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2019-09-03 12:07:39 page 12 of 12

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles E. Houston, Jr.

Plaintiff,

v.

Dean B. Bell, individually;
Law Offices of Dean B. Bell, LLC; and
B. Hammel Properties, LLC,

Defendants.

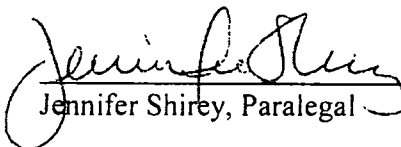
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-07-01559

CERTIFICATE OF SERVICE

The undersigned, of the law office of Adams and Reese LLP, does certify that on **September 5, 2019**, she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, a copy of the **Order Granting Defendant B. Hammel Properties, LLC Summary Judgment filed September 4, 2019** to the following:

Charles E. Houston, Jr.
100 Shady Brooke Walk
Fayetteville, GA 30214


Jennifer Shirey, Paralegal

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Charles E. Houston, Jr.

Plaintiff,

v.

Dean B. Bell, individually;
Law Offices of Dean B. Bell, LLC; and
B. Hammel Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-07-01559

**ORDER GRANTING DEFENDANT B.
HAMMEL PROPERTIES, LLC
SUMMARY JUDGMENT**

The Motion for Summary Judgment of the Defendant B. Hammel Properties, LLC (“Hammel Properties”) filed in this matter on February 13, 2019 was before me on July 10, 2019. W. Cliff Moore, III and Thomas C. Taylor were present as counsel for Hammel Properties. The Plaintiff appeared at that hearing *pro se*. Dean B. Bell also attended the hearing, representing himself and the Law Offices of Dean B. Bell, LLC.

This action is the Plaintiff’s collateral attack on a decision entered in a separate partition action that ended in March of 2014. In the matter styled *Cornelia H. Hall, et al v. Charles E. Houston, Jr.*, Civil Action Number 2011-CP-07-05141 (the “Partition Action”) the Plaintiff Charles E. Houston’s (“Houston”) sisters secured an order that partitioned, by sale, real property on Hilton Head Island. The order for partition directed the private marketing and sale of the real property. The Hammel Properties, LLC purchased the property through the process identified in the partition order.

In this action, Houston alleges that the trial court in the Partition Action lacked jurisdiction; the trial court’s decision in the Partition Action was contrary to previous orders entered in the Partition Action; the decision in the Partition Action violated the Houston’s due process rights; and the relief awarded in the Partition Action was beyond the authority of the trial court to award. On these allegations, Houston requests that this Court set aside the transfer of his interest in the real property that passed to this Defendant through the partition process and award Houston damages for wrongfully taking that property from him.

In its motion for Summary Judgment, Hammel Properties argues that there is no genuine issue of material fact raised by Houston's pleadings and that Hammel Properties is entitled to Summary Judgment as a matter of law. Based on the pleadings filed in this matter, the submissions of counsel in support of the motion, the submissions of Houston opposing the motion, arguments of counsel and applicable law, I find and conclude as follows:

FINDINGS OF FACT

1. Cornelia H. Hall ("Hall"), Jeanne H. Hampton ("Hampton"), Mary A. Houston ("M. Houston"), and Houston jointly owned property on Hilton Head Island that is commonly referred to as 31 Marshland Road (the "Subject Property").
2. On December 7, 2011 Dean B. Bell ("Bell"), in his capacity as attorney for Hall, Hampton and M. Houston, (also referred to as the "Partition Plaintiffs") filed an action against Houston seeking the partition by sale of the Subject Property.
3. Houston appeared pro se in that matter and filed his Answer.
4. On June 4, 2012, Bell, on behalf of the Partition Plaintiffs, filed a Motion for Order of Reference and a Motion for Summary Judgment in the Partition Action with a Certificate of Mailing signed by Bell's paralegal indicating service of those motions on Houston by mail on June 1, 2012. Houston claims that he did not receive a copy of the Motion for Order of Reference.
5. The Court in the Partition Action scheduled a hearing on the Motion for Order of Reference and the Motion for Summary Judgment for August 10, 2012. At the scheduled hearing, the Court heard discovery motions and the Motion for Order of Reference. Houston was present at the hearing and made an oral Motion to Dismiss the Complaint of the Partition Plaintiffs. By Order dated August 20, 2012 and recorded September 4, 2012 (the "Order of Reference"), the Court granted the Motion for Reference, referring the matter to the Master in Equity for Beaufort County and provided time for the Partition Plaintiffs to amend their Complaint. The Court did not hear the Summary Judgment Motion.
6. Houston alleges that the Order of Reference made the determination that any partition of the Subject Property would be by a public auction. The Order of Reference does not contain the determination suggested by Houston.
7. Houston also claims that, at the August 10, 2012 hearing, the Court ruled that the Partition Plaintiffs could amend their Complaint, but they were restricted on what they could allege

in that Amended Complaint. Houston did not believe that the Partition Plaintiffs could pursue claims for an accounting on rents, taxes and “other sundry items”, and were restricted to pursuing partition by public sale. The Order of Reference does not restrict what the Partition Plaintiff were able to alleged in their Amended Complaint.

8. Bell, in his capacity as attorney for the Partition Plaintiffs, filed an Amended Complaint in the Partition Action on October 4, 2012. The Amended Complaint included claims against Houston for rent and an action for contribution for taxes, insurance and other expenses associated with maintenance of the Subject Property. The Amended Complaint also specifically alleged that the partition sale of the Subject Property should be a private sale secured through the use of private real estate agent.

9. Houston responded to the Amended Complaint with an Answer dated November 15, 2012 that specifically denied the Partition Plaintiffs’ allegations concerning Houston’s responsibility for rent, taxes, insurance and other expenses associated with the maintenance of the Subject Property. Houston also denied that the partition should be by private sale.

10. The Master in Equity for Beaufort County conducted the trial in the Partition Action on May 22, 2013. Houston was present at the trial.

11. On June 24, 2013, Bell communicated with the Master in Equity for Beaufort County by electronic mail requesting a decision by the Master in Equity. The electronic mail shows that Bell sent Houston a copy of the communication, but Houston claims that the address used was the wrong address.

12. The Master in Equity responded to Bell’s June 24, 2013 electronic mail on the same date asking Bell to prepare a proposed order. The Master in Equity copied Houston on that communication to the same address Houston claims is incorrect.

13. Bell presented a proposed order to the Master in Equity on July 9, 2013 by electronic mail and provided a copy to Houston at the same address Houston claims to be incorrect.

14. The Master in Equity executed a Final Order in the Partition Action on July 15, 2013 and the Clerk of Court for Beaufort County recorded it on July 19, 2013 (the “Final Order”).

15. The Final Order provides, among other things,

- a. For partition by private sale to be managed by Hall through a real estate broker;
- b. That Houston owed the Partition Plaintiffs a sum of money for his failure to contribute to the cost of hazard insurance on the Subject Property;

- c. That amounts paid by the Trustees for the Houston-Patterson Educational Trust for property taxes would be refunded to those Trustees from the proceeds of the partition sale;
 - d. That a portion of the proceeds from the partition sale due to Houston would be paid to the Partition Plaintiffs as rent owed by Houston for use of the Subject Property as his law office and rent owed from a tenant that Houston allowed to occupy the Subject Property; and
 - e. That attorney fees to pay Bell for a portion of the attorney fees incurred for the partition action would be paid from the portion of partition sale proceeds to which Houston was entitled.
16. Houston filed a Motion for Reconsideration of the Final Order on July 30, 2013 that challenged the Final Order on the following grounds:
- a. Bell submitted a proposed order to the Master in Equity in *ex parte* communications without being requested to submit such a proposed order;
 - b. The Master in Equity erred in allowing testimony concerning an accounting from Houston, conversion and partition by private sale because those claims had been dismissed by the Order of Reference and the Court ruled that the sole cause of action by Partition Plaintiffs was an action for partition by public sale;
 - c. The Master in Equity failed to consider the Subject Property to be "heirs title";
 - d. The Master in Equity lacked jurisdiction concerning issues relating to contribution among heirs to decedent's estate; and
 - e. The finding of attorney's fees to be paid to Bell was improper because the Master in Equity should not have ruled in favor of the Partition Plaintiffs.
17. The Court denied Houston's Motion to Reconsider on September 11, 2013.
18. On September 23, 2013, Houston served his Notice of Appeal of the Final Order.
19. Houston did not pursue the appeal and the matter was remitted to the circuit court on March 10, 2014.
20. On June 23, 2015, Hall made, executed and delivered a General Warranty Deed conveying the Subject Property to Hammel Properties pursuant to the authority given to Hall in the Final Order (the "Partition Deed"). Hammel Properties paid Three Hundred Eighty-Five Thousand and 00/100 Dollars (\$385,000.00) for the Subject Property.

21. On July 1, 2015, Todd E. Houston, in his capacity as Trustee of the Houston-Patterson Educational Trust, filed an action against M. Houston, in her capacity as a Trustee the same Trust, Hall (individually), and Wells Fargo Bank alleging, among other things, breach of trust, and conspiracy, embezzlement (the "Trust Action"). Todd E. Houston ("T. Houston") is Houston's son and Houston served as attorney for T. Houston in the Trust Action. Houston was also a co-trustee of the Houston-Patterson Educational Trust. The allegations in the Trust action concerned M. Houston's and Hall's handling of a payment due to the Trustees pursuant to paragraph 9 of the Final Order.

22. On January 5, 2018, T. Houston filed a complaint against Bell with The South Carolina Supreme Court, Commission on Lawyer Conduct accusing Bell of embezzlement, the misappropriation of client funds, intentionally disobeying a court order, fraud and deceit. Houston assisted T. Houston in the preparation of his complaint letter against Bell.

23. The parties settled the Trust Action on February 12, 2018. Houston, in his capacity as a Trustee of the Trust, was a party to the settlement.

24. On May 22, 2018, Hammel Properties made executed and delivered a Title to Real Estate conveying the Subject Property, along with other real property, to DMS Funding I, LLC. DMS Funding I, LLC paid Hammel Properties One Million Two Hundred Forty-Two Thousand and 00/100 Dollars (\$1,242,000.00) for several parcels of real property, which included the Subject Property.

25. Houston filed his Complaint in this action on July 31, 2018. The Complaint sets forth seven causes of action as follows:

- a. A collateral attack on the Final Order challenging the jurisdiction of the Master in Equity based on the allegation that there was no Order of Reference to the Master in Equity (the "First Cause of Action");
- b. A challenge that the Final Order was inconsistent with the previous rulings by the Court in the Partition Action (the "Second Cause of Action");
- c. Allegations of due process violations by the Court for ignoring the law of the case and against Bell for *ex parte* submissions of unsolicited proposed orders to the Master in Equity (the "Third Cause of Action");
- d. A collateral attack on the Final Order as exceeding the jurisdictional and statutory powers of a court of equity in South Carolina (the "Fourth Cause of Action");

- e. An action to determine that the Partition Deed did not convey Houston's interest in the Subject Property to the Defendant because the Master in Equity did not have the authority to authorize Hall to transfer Houston's interest in the Subject Property as set out in the Final Order (the "Fifth Cause of Action");
 - f. An action for wrongful ouster against Bell and Bell's law firm (the "Sixth Cause of Action"); and
 - g. An action to recover damages for waste to the Subject Property and theft of personal property that Houston failed to remove from the Subject Property (the "Seventh Cause of Action")
26. The Third Cause of Action was not made against Hammel Properties.

CONCLUSIONS OF LAW ON THE SUMMARY JUDGMENT STANDARD

27. Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn therefrom, must be viewed in the light most favorable to the nonmoving party. *BPS, Inc. v. Worthy*, 362 S.C. 219, 325, 608, S.E.2d 155, 158 (Ct. App. 2005). All ambiguities, conclusions, and inferences rising from the evidence must be construed most strongly against the moving party. *Id.* at 325, 608 S.E.2d at 159. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Bennet v. Investors Title Ins. Co.*, 370 S.C. 561, 569, 635 S.E.2d 660, 664 (Ct. App. 2006). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by 'showing' --that is, pointing out to the [trial] court --that there is an absence of evidence to support the nonmoving party's case." *Id.* (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). "The moving party need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" *Id.* (quoting *Celotex*, 477 U.S. at 323); see also *Richardson v. State-Record Co.*, 330 S.C. 562, 499 S.E.2d 822 (Ct.App.1998). The purpose of

summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003).

CONCLUSIONS OF LAW ON HOUSTON'S CHALLENGE TO THE ORDER OF REFERENCE TO THE MASTER IN EQUITY IN THE PARTITION ACTION

28. Houston alleges that there was no Order of Reference. The file maintained by the Clerk of Court for Beaufort County on the Partition Action contains the Order of Reference that directly contradicts Houston's allegation.

29. Further, Houston voluntarily and intentionally participated in the Partition Action after it was referred to the Master in Equity. He participated in the trial, filed a motion for the Master in Equity to reconsider the Final Order, and initiated the process to appeal the Master in Equity's Final Order – all without a challenge to the jurisdiction of the Master in Equity. Through this participation, Houston voluntarily and intentionally abandoned his right to challenge the jurisdiction of the Master in Equity. *See, Spur at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015).

30. On Houston's claim that the Master in Equity lacked jurisdiction in the Partition Action, there is no genuine issue of material fact. The Master in Equity had jurisdiction pursuant to the Order of Reference.

CONCLUSIONS OF LAW ON THE HAMMEL PROPERTIES' ASSERTION THAT ALL OF HOUSTON'S CLAIMS ARE BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL

31. All of the claims raised by the Houston in his Complaint were fully litigated and finally resolved in the Partition Action. Accordingly, the doctrine of collateral estoppel stands as a bar to the relief demanded by the Houston in this action. *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). While Houston fails to join the other parties to the Partition Action in this action, the doctrine of collateral estoppel does not require mutuality of the parties in the actions compared. South Carolina recognizes nonmutual collateral estoppel. *Id.*

32. As a matter of law, Hammel Properties is entitled to summary judgment on all of Houston's claims because the doctrine of nonmutual collateral estoppel bars each of Houston's claims.

**CONCLUSIONS OF LAW ON HAMMELL PROPERTIES' ASSERTION
THAT ALL OF HOUSTON'S CLAIMS ARE BARRED BY
THE STATUE OF LIMITATIONS**

33. The claims made in Houston's complaint are also barred by the statute of limitations. While challenges to final judgments may be handled by motion pursuant to Rule 60, SCRPC, collateral attacks in a separately filed action are also appropriate. Rule 60(b), SCRPC, *See, e.g., Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct. App. 1988).

34. The time for challenges pursuant to Rule 60, whether by motion or by collateral attack in a separate action, are set out in that rule. *Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct. App. 1988). Challenges to a final order or judgment for the reasons set out in Rule 60(b)(1), (2), and (3) must be filed "not more than one year after the judgment, order or proceeding was entered or taken." Efforts to set aside a final order or judgment for reasons detailed in Rule 60(b)(4) and (5) must be made within a "reasonable time".

35. Houston filed the Complaint in this action four (4) years, four (4) months and twenty-one (21) days after the Court of Appeals issued the Remittitur ending Houston's appeal of the Final Order. If Houston's claims are pursuant to Rule 60(b) (1), (2), or (3) the date of the filing of the Complaint is well beyond the one year required for challenges to be made under those provisions of Rule 60(b).

36. Houston offers no reason for the delay in filing this collateral attack on the Final Order. His Complaint filed on July 31, 2018 merely repeats the challenges he made almost five (5) years earlier when he filed his Motion to Reconsider the Final Order on September 11, 2013. The length of the delay, coupled with a lack of explanation for the delay and Houston's conduct following the Final Order – the Motion to Reconsider, the appeal, the Trust Action, and the Complaint to the Commission on Lawyer Conduct- allow this Court to determine that, as a matter of law, Houston's claims under Rule 60(b)(5) are time barred. A four (4) year delay in the filing of a Rule 60(b), SCRPC Motion to set aside a partition action based on fraud has been determined to be an unreasonable time. *Perry v. Heirs at Law & Distributees of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003). In *McDaniel v. United States Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996), the court upheld a special referee's decision that a Rule 60(b)(4) motion was untimely when made four years after the judgment. ("The special referee's decision that McDaniel's motion was untimely after nearly four years is not an abuse of

discretion, especially since McDaniel participated in the settlement, received substantial benefits from it, and utilized § 38-77-940 as the basis for a cause of action in his 1989 complaint.”). The court of appeals has also held that an 18-month delay was unreasonable under Rule 60(B)(4) and (5) - *Smith Cos. v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993) (“The record reveals no justifiable reason to excuse Hayes's delay in seeking to set aside the February 23d judgment. Relief from judgment under Rule 60 should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion.”).

37. Our courts have recognized the inherent power of a court of equity to set aside its judgments. *See Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct. App. 1988). In upholding that inherent power, courts have held that a judgment may be set aside on the ground of fraud only if the fraud is "extrinsic" and not "intrinsic." *Hagy v. Pruitt (In re Pruitt)*, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000) (“[C]ourts have the inherent authority to set aside a judgment on the grounds of extrinsic fraud in spite of any facially applicable statutes of limitation.”); *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 609-610 (2003). “There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court.” *Chewning*, 579 S.E. 2d at 609-610.

38. Extrinsic fraud is “fraud that induces a person not to present a case or deprives a person of the opportunity to be heard...” *Chewning*, 579 S.E.2d at 81. In his Complaint, Houston specifically alleges extrinsic fraud. The conduct that he describes as extrinsic fraud is the *ex parte* communication Bell allegedly had with the Master in Equity. However, Houston does not allege that those communications induced Houston not to present his case or deprived him of the opportunity to be heard. To the contrary, Houston appeared and argued this very point to the Master in Equity in his Motion to Reconsider.

39. Houston has offered no reason for which he can collaterally attack the Final Order that is not time barred. Accordingly, the statute of limitations defense is a separate and independent basis for granting the summary judgment to Hammel Properties on all of the Houston’s claims.

CONCLUSIONS OF LAW ON HAMMEL PROPERTIES’ LACHES DEFENSE

40. “The equitable doctrine of laches is defined as ‘neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what

in law should have been done.” *Robinson v. Estate of Harris*, 389 S.C. 360, 371-372, 698 S.E.2d 801, 807 (2010), quoting, *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). “Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.” *Robinson*, 296 S.C. at 372, 689 S.E.2d at 807, citing, *Chambers of S.C., Inc. v. County Council of Lee County*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party alleging laches must show (1) delay, (2) the delay was unreasonable under the circumstances, and (3) resulting prejudice. *Robinson*, 296 S.C. at 372, 689 S.E.2d at 807, citing, *Hallums*, 296 S.C. at 199, 371 S.E.2d at 528.

41. More than three (3) years before Houston filed this claim, Hall deeded the Subject Property to this Defendant. After holding and maintaining the Subject Property for two (2) years and 11 months this Defendant sold the Subject Property to a third party. Houston provides no explanation for the delay and there is no allegation that the delay was reasonable. This delay was unreasonable.

42. Hammel Properties has demonstrated that granting the relief requested by Houston – setting aside the deed to Hammel Properties - would prejudice Hammel Properties. Such a determination would subject Hammel Properties to claims by the party to whom it sold the Subject Property, deprive it of the return on its investment in the Subject Property, and require Hammel Properties to pursue Houston and his family members for the Three Hundred Eight Five Thousand and 00/100 Dollars (\$385,00.00) it paid for the Subject Property.

43. Houston’s claims are barred by the doctrine of laches. This is a separate and independent ground for granting Hammel Properties request for Summary Judgment.

IT IS THEREFORE ORDERED THAT there is no genuine issue of any material fact on the claims raised by Houston against Hammel Properties and Hammel Properties is entitled to judgment entered for it on all of the claims asserted by Houston against Hammel Properties as a matter of law. This is a judgment in favor of Hammel Properties on the whole matter and denying all of the relief that Houston requested against Hammel Properties.

AND IT IS SO ORDERED.

(Judge’s signature to follow)



Beaufort Common Pleas

Case Caption: Charles E Houston Jr VS Dean Bell , defendant, et al

Case Number: 2018CP0701559

Type: Order/Summary Judgment

So Ordered

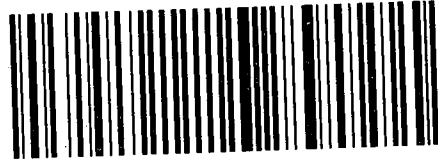
s/ Edgar W. Dickson #2153

Electronically signed on 2019-09-03 12:07:51 page 11 of 11

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