

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

DEC 20 2019

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2019-001894

Case No. 2007-CP-07-03212

H. Marshall Hoyler,.....Petitioner,

v.

The State of South Carolina; Merry Land Properties, LLC;
Sherbert Living Trust; Supan Living Trust; Elizabeth R. Levin;
Edward McCray Wise Revoc. Living Trust; Carol Ann DeVries
Wise Revoc. Living Trust; Amelie Cromer; Philip Cromer; Robert
Chiavello; Tocharoen Living Trust; Helen M. Olesak; Lesley Anne
Glick a/k/a Lesley Ann Glick; Shirley G. Lackey; Patricia Banfield;
Bertrand Cooper, Jr.; NHP SH South Carolina I, LLC n/k/a CCP
Bayview 7176 LLC; Oyster Cove Homeowners Ass'n; Shirley
Anne Moyer; Barry D. Malphrus; Garry D. Malphrus; Donnie
Malphrus; Rita Brown; Houston Family Partnership; Joan Taylor
Trustee; Michael Bull; Nancy Bull; Marny H. VonHarten;
Dianne M. Donaldson; Brian R. Evans; Stephen Durbin; Valerie
Durbin; Phillip Marti; Jane Marti; Michael Woodsworth;
Georgiana M. Cooke; Daniel B. Walsh; Janet E. Walsh..... Defendants,

Of which, The State of South Carolina and Merry Land
Properties, LLC are the..... Respondents.

MOTION FOR LEAVE TO FILE
BRIEF OF *AMICUS CURIAE* BEAUFORT RIVER DEVELOPMENT, LLC
IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Wm. Grayson Lambert
BURR & FORMAN LLP
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800
Counsel for Amicus Curiae

Pursuant to Rule 213, SCACR, Beaufort River Development, LLC respectfully moves for leave to file an *amicus curiae* brief in in opposition to the petition for a writ of certiorari. As permitted by Rule 213, SCACR, the *amicus curiae* brief is being conditionally filed with this motion.

Interest of *Amicus Curiae*

Beaufort River Development is a South Carolina limited liability corporation that purchased about 7.4 acres of undeveloped land, including 800 feet along the Beaufort River, in March 2007 for \$5.45 million. Beaufort River Development has spent another \$2.7 million in permitting and infrastructure for the property, and it was assigned a permit from the Department of Health Environmental Control to build a dock over the marsh to the river.

Like the property owned by Merry Land Properties, Beaufort River Development's property is adjacent to the marsh that Hoyler claims to own. Therefore, any decision about the validity of Hoyler's deed will affect Beaufort River Development, including its ability to access the river from its property.

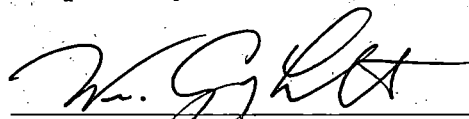
Desirability of *Amicus Curiae* Brief

The petition for a writ of certiorari focuses on an 1891 deed, its interpretation, and how to determine what land was supposedly conveyed. But this case also raises important questions of estoppel. Although the lower courts had no need to decide the estoppel issues give their conclusions about the invalidity of the deed, this Court should be aware of these issues as it considers the petition.

On a most basic level, this case involves estoppel by silence and our State's well-established rule that if someone sees a person building on his land and says nothing, "he will lose his land." *S. Ry. Co. v. Day*, 140 S.C. 388, 138 S.E. 870, 874 (1926); *see also Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 358, 628 S.E.2d 902, 911 (Ct. App. 2006); *McClintic v. Davis*, 228 S.C. 378, 383, 90 S.E.2d 364, 366 (1955). Hoyler claims to have owned marsh along the Beaufort River since 1979, yet over three decades, landowners along that marsh either built docks across the marsh to the river or obtained permits (through a "very public" process) to build docks across the marsh. Yet Hoyler said nothing. This failure to speak means that, even if Hoyler were correct about the validity of his deed and about the land it conveyed, he now cannot object to these docks and permits.

The *amicus curiae* brief discusses this estoppel-by-silence issue to bring this law to the Court's attention and ensure the Court is aware of the potential ramifications of this case.

Respectfully Submitted,



Wm. Grayson Lambert
S.C. Bar No. 101282
BURR & FORMAN LLP
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800

*Counsel for Amicus Curiae
Beaufort River Development, LLC*

December 20, 2019
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

DEC 20 2019

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2019-001894

Case No. 2007-CP-07-03212

H. Marshall Hoyler,.....Petitioner,

v.

The State of South Carolina; Merry Land Properties, LLC;
Sherbert Living Trust; Supan Living Trust; Elizabeth R. Levin;
Edward McCray Wise Revoc. Living Trust; Carol Ann DeVries
Wise Revoc. Living Trust; Amelie Cromer; Philip Cromer; Robert
Chiavello; Tocharoen Living Trust; Helen M. Olesak; Lesley Anne
Glick a/k/a Lesley Ann Glick; Shirley G. Lackey; Patricia Banfield;
Bertrand Cooper, Jr.; NHP SH South Carolina I, LLC n/k/a CCP
Bayview 7176 LLC; Oyster Cove Homeowners Ass'n; Shirley
Anne Moyer; Barry D. Malphrus; Garry D. Malphrus; Donnie
Malphrus; Rita Brown; Houston Family Partnership; Joan Taylor
Trustee; Michael Bull; Nancy Bull; Marny H. VonHarten;
Dianne M. Donaldson; Brian R. Evans; Stephen Durbin; Valerie
Durbin; Phillip Marti; Jane Marti; Michael Woodsworth;
Georgiana M. Cooke; Daniel B. Walsh; Janet E. Walsh..... Defendants,

Of which, The State of South Carolina and Merry Land
Properties, LLC are the..... Respondents.

CERTIFICATE OF SERVICE

This Motion for Leave to File Brief of *Amicus Curiae* was served on all counsel
of record via first class U.S. Mail, postage prepaid, on December 20, 2019:

Richard L. Whitt
Jefferson D. Griffith
Whitt Law Firm, LLC
401 Western Lane, Suite E
Irmo, SC 29063

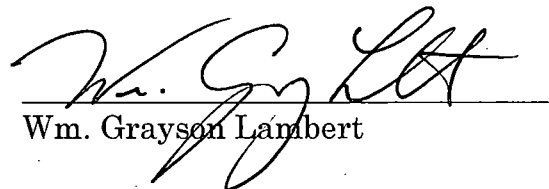
Attorneys for Petitioners

Mary Duncan Shahid
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401

Attorney for Respondent Merry Land Properties, LLC

J. Emory Smith, Jr.
S.C. Attorney General's Office
1000 Assembly Street
Columbia, SC 29201

Attorney for Respondent The State of South Carolina


Wm. Grayson Lambert