

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Appellate Case No. 2020-01104
Trial Court Case No. 2018-CP-10-04284

BONITA STEED and BERNARD STEED,

Respondents,

v.

ANTOINE HEYWARD, RUBY HEYWARD
And also all other persons unknown, claiming
Any right, title, estate, interest in or lien upon
The real estate described in the amended
Complaint herein,

Appellants.

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Oct 12 2020
SC Court of Appeals

APPELLANTS' INITIAL BRIEF

Dated: October 12, 2020

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STATEMENT OF ISSUES ON APPEAL

- I. **DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS GIVEN THAT THERE EXISTED GENUINE ISSUES AS TO MATERIAL FACTS BETWEEN THE PARTIES REGARDING RESPONDENTS' ADVERSE POSSESSION CLAIM?**

- II. **DID THE TRIAL COURT ERR IN FINDING THAT APPELLANTS' COUNTERCLAIM TO QUIET TITLE TO APPELLANTS' PROPERTY WAS BARRED BY THE DOCTRINE OF LACHES?**

- III. **DID THE TRIAL COURT ERR IN GRANTING RESPONDENTS' MOTION FOR SANCTIONS AS THE PARTIES HAD AGREED THAT THIS MOTION WOULD BE HELD IN ABEYANCE PENDING THE OUTCOME OF RESPONDENTS' MOTION FOR SUMMARY JUDGMENT?**

STATEMENT OF THE CASE

On August 29, 2018, Respondents filed a Complaint with Jury Demand with the Charleston County Court of Common Pleas, Case No. 2018-CP-10-4284. (Complaint). In the Complaint, Respondents set forth facts that Appellants resided in Chicago, Illinois and that Appellants claimed title to property located at 516 Bank Street, Mt. Pleasant, SC by virtue of Deed dated January 11, 1999, from Louise Brown Heyward to Robert James Heyward, deceased (Complaint, P. 1).

In the Complaint were the following allegations:

1. That Respondents were making a claim for adverse possession for property located at 516 Bank Street, Mt. Pleasant, Charleston County, South Carolina, TMS# 532-05-00-113 (Complaint, P. 2).
2. That the property was the same property conveyed to Louise Brown Heyward by deed of P.A. Foster and J.M. Graham dated July 27, 1960, and recorded in the RMC Office for Charleston County in Deed Book A72, at Page 175 on August 2, 1960 (Complaint, P. 2).
3. That Respondents had exclusive, complete, actual, open, notorious, hostile and continuous undisputed possession of the property adverse to Appellants for more than ten (10) years (Complaint, P. 2).
4. That Appellant Antoine Heyward and his father, the deceased Robert Heyward, had never been in possession of the property; never used their money to pay taxes on the property, never had insurance on the property or any other indicia of ownership other than the deed cited above (Complaint, P. 2).
5. That Appellant Antoine Heyward's claim was without any right, and he had no estate, right, title, lien or interest in or to the Property, or any part of the Property (Complaint, P. 2).
6. That Respondents had paid real estate taxes and homeowners insurance for the past ten (10) years (Complaint, P. 3).
7. That Respondents had made substantial improvements to the Property over the past twenty (20) years (Complaint, P. 3).
8. That the property included a substantial enclosure, a house, in which Respondents lived for more than forty (40) years (Complaint, P. 3).

9. That Appellant Antoine Heyward had only visited the Property on one occasion during the last ten (10) years, for the funeral of his father held at the Property after seeking and receiving permission of Respondents to have the funeral there (Complaint, P. 3).
10. That Respondents had always claimed ownership and title to the property and had never paid rent to the Appellant or any other person (Complaint, P. 3).
11. That Respondents were entitled to a declaratory judgment that they were the fee simple owners by adverse possession of the property (Complaint, P. 3).

On October 4, 2018, Appellant Antoine Heyward filed an Answer, Counterclaim and Cross-claim in this matter (Answer of Antoine Heyward).

1. Denied Respondents' allegations for adverse possession of property located at 516 Bank Street, Mt. Pleasant, Charleston County, South Carolina, TMS# 532-05-00-113 (Answer, P. 1).
2. Admitted that the property was the same property conveyed to Louise Brown Heyward by deed of P.A. Foster and J.M. Graham dated July 27, 1960, and recorded in the RMC Office for Charleston County in Deed Book A72, at Page 175 on August 2, 1960 (Answer, P. 1).
3. Denied that Respondents had exclusive, complete, actual, open, notorious, hostile and continuous undisputed possession of the property adverse to Appellants for more than ten (10) years (Answer, P. 1).
4. Denied that Appellant Antoine Heyward and his father, the deceased Robert Heyward, had never been in possession of the property; never used their money to pay taxes on the property, never had insurance on the property or any other indicia of ownership other than the deed cited above (Answer, P. 1).
5. Denied that Appellant Antoine Heyward's claim was without any right, and he had no estate, right, title, lien or interest in or to the Property, or any part of the Property (Answer, P. 1).
6. Denied that Respondents had paid real estate taxes and homeowners insurance for the past ten (10) years (Answer, P. 1).
7. Denied that Respondents had made substantial improvements to the Property over the past twenty (20) years (Answer, P. 1).
8. Denied that the property included a substantial enclosure, a house, in which Respondents lived for more than forty (40) years (Answer, P. 1).

9. Denied that Appellant Antoine Heyward had only visited the Property on one occasion during the last ten (10) years, for the funeral of his father held at the Property after seeking and receiving permission of Respondents to have the funeral there (Answer, P. 1).
10. Denied that Respondents had always claimed ownership and title to the property and had never paid rent to the Appellant or any other person (Answer, P. 1).
11. Denied that Respondents were entitled to a declaratory judgment that they were the fee simple owners by adverse possession of the property (Answer, P. 1).

Further, Appellant filed a Counterclaim for Quiet Title against Respondents (Answer, P. 2). Appellant claimed title to the property by virtue of Deed of Distribution from Estate of Robert Heyward dated April 1, 2016 and recorded in the Charleston County Register of Deeds on May 27, 2016 in Book 0556, Page 830 (Answer, P. 3) and that the Estate of Robert Heyward had been properly probated in the Charleston County Probate Court, Case NO. 2015-ES-10-00947 (Answer, P. 3).

On October 5, 2018, Respondents filed an Amended Complaint with Jury Demand wherein they added Ruby Heyward, widow of Robert Heyward and mother of Appellant Antoine Heyward, to the lawsuit (Amended Complaint, P. 1) . Respondent also added the following language to their Amended Complaint in that Appellants also claimed title through “the Estate of Robert James Heyward to Antoine Heyward and Ruby Heyward” (Amended Complaint, P.1).

On October 10, 2018, Appellant Antoine Heyward filed an Amended Answer, Counterclaim and Cross-Claim wherein he admitted the allegation of Respondent’s Amended Complaint regarding his mother, Ruby Heyward, having an interest in the property, and again denied any and all other allegations in the Respondents’ Amended Complaint (Amended Answer of Antoine Heyward, P. 1).

On November 16, 2018, Respondents filed their Answer to Appellant Antoine Heyward’s

Counterclaim (Plaintiff's Answer to Counterclaim, P. 1). Respondents referred to the deed referenced in said Paragraph 15 of the Counterclaim "for the terms and deny any allegations inconsistent therewith" as to Appellant Antoine Heyward's Counterclaim allegation that:

"Said property is designated as owned by Defendant Antoine Heyward and Ruby Heyward, each with 50% undivided interest as tenants in common, by Deed of Distribution from Antoine Heyward, Personal Representative of the Estate of Robert Heyward dated April 1, 2016 and recorded in the Charleston County Register of Deeds on May 27, 2016 in Book 0556, Page 830 (Plaintiffs' Answer to Counterclaim of Antoine Heyward, P. 2).

On February 14, 2019, Appellant Ruby Heyward filed an Answer, Counterclaim and Cross-Claim as to Respondent's Amended Complaint (Answer, Counterclaim and Cross-Claim of Ruby Heyward). Appellant Ruby Heyward's answers and counterclaim allegations were in agreement with Appellant Antoine Heyward's answers and counterclaim allegations (Answer, Counterclaim and Cross-Claim of Ruby Heyward).

On February 22, 2019, Respondents filed an Answer to Appellant Ruby Heyward's Counterclaim (Plaintiffs' Answer to Counterclaim of Defendant Ruby Heyward). Respondents referred to the deed referenced in said Paragraph 15 of the Counterclaim "for the terms and deny any allegations inconsistent therewith" as to Appellant Ruby Heyward's Counterclaim allegation that:

"Said property is designated as owned by Defendant Antoine Heyward and Ruby Heyward, each with 50% undivided interest as tenants in common, by Deed of Distribution from Antoine Heyward, Personal Representative of the Estate of Robert Heyward dated April 1, 2016 and recorded in the Charleston County Register of Deeds on May 27, 2016 in Book 0556, Page 830 (Plaintiffs' Answer to Counterclaim of Antoine Heyward, P. 2).

On May 21, 2019, Respondents filed a Motion to Compel Attendance at Depositions and for Sanctions for Failure to Attend Noticed Depositions (Motion to Compel). Respondents

confirmed that Appellants' counsel had explained that Appellants would not be able to appear for depositions because Appellant Antoine Heyward was the sole caregiver for his mother, Appellant Ruby Heyward, that his mother was 83 years old, in failing health and unable to travel from Chicago, Illinois to Charleston, South Carolina. Appellant Ruby Heyward was not able to travel long distances in comfort and was suffering from arthritis and memory loss (Affidavit of Alice Paylor, Esq., Exhibit 8- Email between Karen DeJong, Esq. and Alice Paylor, Esq.).

As a viable alternative, Appellants' counsel suggested that the deposition of Antoine Heyward be conducted by telephone and that mediation be conducted by telephone (Affidavit of Alice Paylor, Esq., Exhibit 8).

On August 12, 2019, Appellant Antoine Heyward filed an Affidavit in Support of Opposition to Plaintiffs' Motion to Compel Attendance at Depositions (Affidavit of Antoine Heyward). Set forth in the sworn Affidavit were the facts that Appellant Antoine Heyward worked full-time and worked Monday from Friday; that his mother, Appellant Ruby Heyward, was 83 years old and in poor health. He attested that Appellant Ruby Heyward suffered from arthritis and memory loss and that it would be very difficult for her to testify accurately and consistently. Appellant Antoine Heyward attested to the fact that his mother suffered from mental and physical ailments that would make it impossible for her to travel long distances in comfort and that he was the sole caregiver of Appellant Ruby Heyward thereby making it impossible for Appellant Antoine Heyward to travel from Chicago, Illinois to Charleston, South Carolina, leaving his mother alone (Affidavit).

On September 13, 2019, after a hearing before Hon. Roger Young, an Order was filed that granted Respondents' Motion to Compel Attendance at Depositions and Mediation as to Appellant Antoine Heyward and awarded \$500.00 of attorney fees against Appellants (Order

filed September 13, 2019, P. 2). The Court also requested that Appellants have a conservator appointed for Appellant Ruby Heyward so that her interests in this action would be protected (Order, P. 1).

On November 20, 2019, Appellant Antoine Heyward consented to being appointed conservator over Appellant Ruby Heyward and that Respondents' counsel had indicated that Respondents' counsel was neutral to this appointment (Letter of Karen DeJong, Esq. filed on November 20, 2019).

On January 10, 2019, Respondents filed a Motion for Sanctions wherein Respondents claimed that Appellants had not had a conservator appointed for Appellant Ruby Heyward (Plaintiffs' Motion for Sanctions).

On March 10, 2020, Respondents filed a Motion to Amend the Complaint in order to include Robert Steed and Ernest Steed as additional parties to the action (Plaintiff's Motion to Amend Complaint). Attached to Plaintiff's Motion to Amend Complaint was Plaintiff's proposed Second Amended Complaint. (Exhibit A to Motion to Amend).

On April 23, 2020, Respondents filed a Motion for Summary Judgment under their Adverse Possession cause of action and Counterclaim Defense of Laches (Plaintiffs' Motion for Summary Judgment).

On April 23, 2020, in support of the Motion for Summary Judgment, Respondents filed Affidavits of Robert Steed, Ernest Steed, Bernard Steed, and Bonita Steed (Affidavits).

Also filed on April 23, 2020 in support of Respondents' Motion for Summary Judgment was the Deposition Transcript of Appellant Antoine Heyward taken on November 14, 2019 (Transcript of Antoine Heyward).

On May 21, 2020, Appellants filed Opposition to Plaintiffs' Motion for Summary

Judgment with Memorandum in Support (Defendants' Opposition). As evidence of Appellants' claim of ownership to the property, and contradicting Respondents' adverse possession claim,

Appellants included the following Exhibits to their Opposition to Plaintiff's Motion for

Summary Judgment:

Exhibit A- Deed from P.A. Foster & J.M. Graham to Louise Brown Heyward dated 7/27/1960 and recorded in the Charleston County RMC Office on 8/6/1960 in Book A72, Page 175.

Exhibit B-Deed from Louise Brown Heyward to Robert James Heyward dated 1/11/1999 and recorded in the Charleston County RMC Office on 1/13/1999 in Book H318, P. 831.

Exhibit C-Deed of Distribution from Estate of Robert Heyward to Ruby Heyward and Antoine Heyward dated 4/1/2016 and recorded in the Charleston County RMC Office on 5/27/2016 in Book 0556, Page 830.

Exhibit D- Deposition Transcript of Antoine Heyward dated 11/14/2019 wherein Appellant Antoine Heyward gave sworn testimony regarding timeline of ownership and his father, Robert Heyward's, frequent occupation of property during the years that Respondents were claiming adverse possession

Exhibit E- Deposition Transcript of Antoine Heyward dated 11/14/2019 wherein Appellant Antoine Heyward gave sworn testimony regarding Appellant Antoine Heyward's occupation of property during the years that Respondents claimed he had not been on property except for father's funeral

Exhibit F- Deposition Transcript of Antoine Heyward dated 11/14/2019 wherein Appellant Antoine Heyward gave sworn testimony that he owned property after his father and that he asked Respondent Bonita Steed for rent.

On May 28, 2020, Respondents filed their Reply in Support of their Motion for Summary Judgment (Reply).

The Respondents' Motion for Summary Judgment was heard on the pleadings. There was no hearing and therefore, there was no transcript.

On July 1, 2020, Hon. Bentley Price filed a Form 4 Order in which he granted Respondents' Motion for Summary Judgment and Motion for Sanctions as against Appellant

Antoine Heyward and Appellant Antoine Heyward as Conservator for Appellant Ruby Heyward (Form 4 Order). The Court denied Respondents' Motion to Amend Complaint. (Form 4 Order).

On July 8, 2020, upon the request of the Court, Respondents' counsel submitted a proposed Order Granting Summary Judgment (Emails and Proposed Order).

On July 13, 2020, the Court filed a Final Order Granting Summary Judgment to Respondents (Order Granting Summary Judgment to Plaintiffs).

On July 24, 2020, emails were exchanged between counsel for the parties regarding the telephone conference that was conducted on May 7, 2020 between Hon. Jennifer McCoy, Alice Paylor, Esq. and Karen DeJong, Esq.. On May 7, 2020, the parties had agreed that the Motion for Sanction would be held in abeyance until after the Motion for Summary Judgment had taken place (Emails).

On August 10, 2020, a Notice of Appeal was filed by Appellants, Antoine Heyward and Ruby Heyward (Notice of Appeal). The Notice of Appeal was filed with the lower court on the same date (Letter).

STANDARD OF REVIEW

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law”, Rule 56(c), SCRPC.

“In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party”. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504

S.E.2d 117, 121 (1998).

An appellate court reviews a grant for summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRPC, Lanham v. Blue Cross & Blue Shield of South Carolina, 349 S.C. 356, 563 S.E.2d 331, 333 (2002). The appellate court can disturb the trial court's findings if the findings are wholly unsupported by the record. McDaniel v. Kendrick, 386 S.C. 437, 688 S.E.2d 852 (2010).

ARGUMENT

1. TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS GIVEN THAT THERE EXISTED GENUINE ISSUES AS TO MATERIAL FACTS BETWEEN THE PARTIES REGARDING RESPONDENTS' ADVERSE POSSESSION CLAIM.

A review of the pleadings, affidavits, transcripts and exhibits that are in the Record on Appeal will show, without a shadow of a doubt, that the Order Granting Summary Judgment relied upon findings of facts that are unsubstantiated and/or strongly contested as shown by the evidence submitted by Appellants. Given that the findings of fact are inaccurate and yet to be determined by a jury, it follows that the conclusions of law are erroneous as well and the Order Granting Summary Judgment should be reversed.

CONTESTED GENUINE ISSUES AS TO MATERIAL FACTS

In **BACKGROUND** Section of Order:

1. "In 1999, Mrs. Louise Heyward signed a deed to her son Robert Heyward (father and husband to the Defendants). Mr. Heyward died in 2014 without disclosing to the Plaintiffs, who have resided on the property in question from 1966 to the present, that he had been deeded the property by Mrs. Heyward.", (Order, P. 2)

This fact finding by the court is inaccurate. First, Robert Heyward is deceased and cannot be questioned regarding the veracity of Respondents' allegations that he did not disclose that he

had been deeded the property. The only evidence submitted by Respondents to support their claim that Robert Heyward did not tell Respondents about his ownership of the property is Respondents' self-serving Affidavits (Affidavits).

However, Respondents knew that the property had been deeded to Robert Heyward because Robert Heyward's Deed is referenced in Respondents' Complaint, in Paragraph 2- "Defendant Heyward is a resident of Chicago, Illinois, and claims title to the Property through a deed, dated January 11, 1999, from Louise Brown Heyward to Robert James Heyward, deceased". (Complaint, P. 1).

In Respondents' Amended Complaint, they acknowledged that Appellants Antoine Heyward and Ruby Heyward had a claim of title "through deeds, dated January 11, 1999, from Louise Brown Heyward to Robert James Heyward, deceased, and the Estate of Robert James Heyward to Antoine Heyward and Ruby Heyward" (Amended Complaint, P. 1)

A deed that is duly recorded, valid and regular on its' face is presumed to be valid in all respects. Davis v. Monteith, 289 S.C. 176, 182, 345 S.E. 2d 724, 727 (S.C. 1986) quoting Avant v. Johnson, 231 S.C. 119, 97 S.E.2d 396 (1957). Copy of the Deed from Louise Brown Heyward to Robert Heyward and copy of the Deed from Estate of Robert Heyward to Antoine Heyward and Ruby Heyward are attached as Exhibits to Defendants' Opposition to Plaintiffs' Motion for Summary Judgment with Memorandum (Opposition, Exhibits B & C, respectively).

Therefore, Respondents knew or should have known that Robert Heyward was the owner of the property since 1999 until his death. The Deed was of public record for the past 21 years. The Respondents cite the Deeds in their Complaint and Amended Complaint. Robert Heyward and, upon his death, Ruby Heyward and Antoine Heyward, are the true owners of the property.

To be noted is the fact that in Respondents' Answers to Appellants Antoine Heyward and

Ruby Heyward's Counterclaims, Respondents specifically referred to the Deeds and denied any allegations inconsistent with the terms of the Deeds. (Plaintiff's Answer to Counterclaim of Antoine Heyward) (Plaintiff's Answer to Counterclaim of Ruby Heyward). Therefore, this finding should be reversed.

As an aside, in Respondents' Motion for Summary Judgment, Respondents argued that they were in possession of a plat dated September 18, 1998 showing Alethia Steed, Respondents' mother, as owner of the property. This plat was not recorded of public record and Appellant Antoine Heyward testified at his deposition that he was not aware of this plat (Deposition Transcript of Antoine Heyward, P. 34- P. 36).

In **BACKGROUND** Section of Order:

1. "The evidence shows that Plaintiffs have continuously and exclusively under right of title occupied the property from 2000 to present day, and that Defendants have never occupied, improved, or maintained the property occupied by the Plaintiffs during this 20 year period." (Order, P. 2)

This fact finding by the court is inaccurate. There is no proof on the record that Respondents Bonita Steed and Bernard Steed had established right of title to the property. In fact, the Order completely ignores the fact that Robert Heyward and then, Appellants, had right of title by recorded Deeds, which Respondents referred to in their Complaint and Amended Complaint.

The Order's finding that Appellants had never occupied, improved or maintained the property occupied by the Respondents is inaccurate. First, Appellant Antoine Heyward testified at his deposition that his father, Robert Heyward, owned the property, and that Robert Heyward had travelled to and had lived on the property many times during the past 20 years (Deposition Transcript of Antoine Heyward, P. 17-21, P. 56-58, P. 66-70).

Second, Respondents sought to add Robert Steed and Ernest Heyward as additional Plaintiffs because they also resided at the property for many years (Motion to Amend-Second Amended Complaint).

Therefore, Respondents were not able to prove that they had continuously and exclusively occupied the the property from 2000 to the date of the Order and this finding should be reversed.

ORDER:

The Court found that the Respondents had presented clear and convincing evidence that their possession of the Property was actual, open, notorious, hostile, exclusive and continuous between 2000, when Louise Heyward died, to the date of the Order. The Court reasoned that Appellants had not presented any evidence that Appellant nor his deceased father had ever given consent for the Respondents to live on or have possession of the property (Order, P. 8). The Court relied solely upon Respondents' Affidavits when making this ruling (Order, P. 8). The Order was identical to the proposed Order of Respondents and was written completely favorable toward the Respondents and against the Appellants, without any basis in fact.

The Court disregarded the recorded deeds showing ownership; Appellant Antoine Heyward's deposition testimony as set forth in his Deposition Transcript dated 11/14/2019 proving that his father, Robert Heyward, had permitted Respondents to live on his property during his lifetime; Appellants' Opposition to Plaintiff's Motion for Summary Judgment with Memorandum in Support thereof (Appellant's Opposition, Exhibit A, B, C, D, E, F); and the fact that Robert Steed and Ernest Steed also resided at the property, therefore, no exclusivity.

There can be no adverse possession where entry to property is permitted by owner. McDaniel v. Kendrick, 386 S.C. 437, 688 S.E.2d 852 (2010). The one claiming title to land by

adverse possession has the burden of proving adverse possession by clear and convincing evidence. Fender v. Heirs at Law of Smashum, et al, 354 S.C. 504, 581 S.E.2d 853 (2003). If one enters the land under permission from the title holder, the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party. Young v. Nix, et al., 286 S.C. 134, 332 S.E.2d 773 (1985).

Respondents did not provided any evidence on the record to show that Respondents notified Robert Heyward that Respondents believed that they owned the property. It was only after the death of Robert Heyward, when Appellant Antoine Heyward received title to the property in 2016 and requested rent from Respondents, that Respondents filed this adverse possession action in 2018, two years later (Transcript, P. 66).

This two year period is insufficient to prove adverse possession as adverse possession can only be sought after a ten (10) years period of occupancy before date of commencement of an action. S.C. Code 15-67-210.

Also, the Order stated that Respondents made substantial improvements upon the property but there are no written documents in the Record on Appeal to prove this allegation made by Respondents in their Affidavits. (Order, P. 4).

Summary Judgment Motion shall be denied if the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

Respondents have failed to prove by clear and convincing evidence that Respondents had exclusive, complete, actual, open, notorious, hostile and continuous undisputed possession of the property adverse to Appellants for more than ten (10) years

The Appellant respectfully requests that the Order filed July 13, 2020 be reversed. Discovery should be completed and this case should be heard before a jury so that a jury can determine which facts are true in this matter in order to then determine if Respondents have proven their claim of adverse possession. If triable issues exist, those issues must go to the jury, Rothrock v. Copeland, 305 S.C. 402, 405, 409 S.E.2d 366, 367 (1991).

II. THE TRIAL COURT ERRED IN FINDING THAT APPELLANTS' COUNTERCLAIM TO QUIET TITLE ON APPELLANTS' PROPERTY WAS BARRED BY THE DOCTRINE OF LACHES.

The Court found, as a sustaining ground in its Order dated July 13, 2020, that Appellants' Counterclaim to quiet title on the Property was barred by the equitable doctrine of laches (Order, P. 8). Based solely upon Respondents' Affidavits and completely disregarding Appellants' evidence on record, the Court decided that "at no point during the 20 year period did any of the Defendants claim they have owned the Property", "it would be inequitable to permit the Defendants to make an ownership claim to the Property after twenty years of inaction and failing to inform Plaintiffs of their claim, despite knowing the substantial time and money that Plaintiffs had invested in the Property", (Order, Page. 9).

The party seeking to establish laches must show delay, that was unreasonable under the circumstances, and prejudice. To establish laches, defendant must show that complaining party unreasonably delayed its assertion of a right, thereby prejudicing the defendant. Emory v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct.App. 2004).

Robert Heyward and Appellants legally and rightfully owned the property. Respondents acknowledged this fact and Respondents did not contest the validity of the Deeds. The Deeds

were actually referenced in Respondents' Complaint and Amended Complaint.

The first time that Appellants were put on notice that Respondents were making an adverse possession claim against Appellants' property was when Appellants were served with Respondents' Complaint and Amended Complaint.

The only reason that Appellants filed a Counterclaim against Respondents for quiet title was because Respondents filed an adverse possession lawsuit. Respondents' Complaint for adverse possession was filed on August 29, 2018 and Respondents' Amended Complaint was filed on October 5, 2018. Appellant Antoine Heyward filed his Counterclaim for quiet title on October 10, 2018 and Appellant Ruby Heyward filed her Counterclaim for quiet title on February 14, 2019.

Respondents have failed to establish that the Appellants had unreasonably delayed their quiet title assertion and Respondents have not been prejudiced at all.

Appellants respectfully requests that Order dated July 13, 2020 regarding the doctrine of laches be reversed.

III. THE TRIAL COURT ERRED IN GRANTING APPELLANTS' MOTION FOR SANCTIONS AS THE PARTIES HAD AGREED THAT THIS MOTION WOULD BE HELD IN ABEYANCE PENDING THE OUTCOME OF RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

On May 7, 2020, in a telephone conference with Judge Jennifer McCoy, counsel for Appellants and Respondents agreed that Respondents' Motion for Sanctions would be heard after the determination of Respondents' Motion of Summary Judgment. In fact, Respondents' Motion for Summary Judgment was substituted in place of Respondents' Motion for Sanctions on the court docket scheduled for May 18, 2020. (Emails). Relying upon the mutual agreement before

the Judge and subsequent emails between the court and attorneys, Appellant did not file an objection to the Motion for Sanctions as Appellant wanted to wait until the outcome of Respondent's Motion for Summary Judgment before she incurred additional attorney fees and expenses.

On May 18, 2020, the Court heard Respondents' Motion for Summary Judgment, on the pleadings and in lieu of a court appearance by counsel. In the Court's Order filed on July 13, 2020, the Court ruled in favor of Respondents' Motion for Summary Judgment but also for Respondents' Motion for Sanctions (Form 4 Order filed July 1, 2020).

After this ruling, Respondents' counsel again agreed that the hearing for Respondents' Motion for Sanctions should have been heard separately (Emails).

Therefore, Appellants respectfully requests that the Order Granting Respondents' Motion for Sanctions be reversed.

CONCLUSION

Based upon the evidence submitted, Plaintiff respectfully requests that the Order Granting Summary Judgment to Respondent and Granting Respondents' Motion for Sanctions be reversed.

Dated: October 12, 2020

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