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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2019-001448

Weldon E. Wall, Sr., ... Appellant,

v.

Harold H. Wall, Sr., ... Respondent.

FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF QUESTION PRESENTED

Is the circuit court's finding that the appellant failed to prove acquisition of title to the ten-acre site by adverse possession supported by evidence?

COUNTERSTATEMENT OF THE CASE

This action was commenced by the appellant, Weldon E. Wall, Sr., with the filing of a summons and complaint in Jasper County Court of Common Pleas on May 17, 2017.

In his first cause of action, the appellant alleged that he and his brother, the respondent Harold H. Wall, Sr., purchased a tract of land in Jasper County known as Roseland Plantation. The appellant alleged that he and the respondent agreed that each would obtain sole title to adjacent ten-acre parcels within Roseland as home sites. The appellant alleged that he had built a home on one of the ten-acre sites but that the respondent continued to hold legal title. The appellant styled his action as one to quiet title to the ten-acre parcel, but the circuit court treated it as an action for specific performance of respondent's alleged agreement to convey his half-interest to appellant. The appellant alleged that in addition to the equitable title acquired by reason of the alleged agreement, he had acquired title by adverse possession.

In his second cause of action, the appellant alleged that he had conveyed his half-interest in Roseland Plantation to the parties' brother, J.W. Wall, in trust; that J.W. Wall had conveyed that half-interest to the respondent; and that the respondent had failed to return the half-interest to J.W. Wall. The appellant alleged that he desired a partition of Roseland Plantation.

In his third cause of action, the appellant alleged that he was entitled to an accounting from the respondent of the benefits derived by him from Roseland, with the value of those benefits to be deducted from the respondent's share in the partition.

The respondent answered, denying the material allegations of the complaint, setting up various defenses, and counterclaiming.

After several amendments to the pleadings, the case was transferred to Beaufort County and referred to the Honorable Marvin H. Dukes, III, Beaufort County Master in Equity.

Trial began on April 30, 2019 and ended the following day.

At the conclusion of the appellant's case, Judge Dukes granted the respondent's motion to dismiss the appellant's second and third causes of action seeking a partition of Roseland Plantation as a whole and accounting, but denying respondent's motion to dismiss the appellant's first cause of action regarding the ten-acre site.

By Final Order issued on May 31, 2019, Judge Dukes dismissed the appellant's first cause of action on various grounds.

Appellant's motion under Rule 59, SCRCP, to alter or amend dated June 11, 2019, was heard by Judge Dukes on July 11, 2019, and denied by Order issued on August 7, 2019.

Appellant served notice of appeal on August 30, 2019.

STATEMENT OF FACTS

Overview

Appellant Weldon Wall's claim to the ten-acre tract at issue began as a contract claim. Only in the alternative was an adverse possession claim sounded. The circuit court rejected both. The appellant has now abandoned his contract claim and appealed only the rejection of his alternative claim for adverse possession.

The two claims were mutually exclusive. Even though only one claim remains in play, the evidence intertwines the two claims. It is impossible now to wipe away the evidence pertinent to the contract claim as though it had never been lodged. Hence, for the most part, the following account of the salient facts does not try to distinguish the claim to which each fact relates.

As noted, appellant's claim began as one for specific performance of an alleged agreement with his brother, respondent Harold Wall.[1] In 1973, Weldon and Harold were cotenants of Roseland Plantation, more than a square mile in size. Weldon

[1] Appellant's complaint casts his cause of action as one to quiet title, but, without objection, the circuit court treated the contract claim as one for specific performance. Order of May 31, 2019 ("Order"), ¶ 4(a), Record on Appeal, p. 6 [hereafter, "R. 6"].

alleges that he and Harold agreed that Weldon would convey to Harold his (Weldon's) half-interest in a ten-acre parcel within Roseland, upon which Harold could build his house. In return, Harold would convey to Weldon his (Harold's) half-interest in an adjacent ten acres for the same purpose when Weldon was ready to receive title. (Weldon had judgments against him in 1973.[2])

This alleged agreement — if it existed — fell through in 1977 when Weldon conveyed his half-interest in Roseland (including the ten-acre parcel at issue) to his and Harold's older brother, J.W. Wall. In 1984, after several back-and-forth conveyances, Harold acquired from J.W. the half-interest in Roseland which J.W. had received from Weldon seven years earlier.[3] Harold has owned Roseland — including the ten acres at issue — to this day.[4]

Weldon's contract claim evolved at some point into the claim presented at trial — not to a *half*-interest in the ten-acre parcel but to all of it. No explanation was given for this doubling of the contract claim. Weldon's claim to the *entire* interest in the ten acres could only be founded upon adverse possession, not contract.

As noted, the contract claim has now been abandoned, as the appellant's "Statement of Issues on Appeal" shows.[5]

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[2] Supplemental Record on Appeal, p. 4 [hereafter, "Supp. R. 4"]. *See* Exh. 95, Supp. R. 126; R. 113.

[3] Order, ¶ 12. R. 5– 6. Exh. 18, R. 191.

[4] Order, ¶ 11, R. 9.

[5] References in the appellant's brief to contractual matters, such as part performance, the statute of frauds, and the statute of limitations, are misplaced in light of the abandonment of the contract claim.

Facts

A. The house.

Weldon built a house[6] on the ten-acre parcel at issue in 1973, using lumber from abandoned houses which he was given.[7] For the necessary cash, he borrowed from Mary Wilcox.[8] When he failed to repay, Mrs. Wilcox took a judgment against him which yielded her nothing.[9]

Weldon lived in this house with his wife Sharon and their children from 1973 until 1977, when three things happened:

- Weldon's wife Sharon divorced him;[10]
- Weldon conveyed his half-interest in Roseland to brother J.W.;[11]
- Weldon moved to Hilton Head,[12] never again to occupy the parcel at issue.[13]

There is no evidence of the *status* of Weldon's former wife Sharon on the property after she divorced Weldon and he departed. Weldon sold out and moved out, leaving Sharon there with the permission of her former brothers-in-law, Harold and J.W.

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[6] The house is now dilapidated, in a tear-down condition. Order, pp. 24-25, ¶ F(II)(1), R. 28–29. Weldon described the house as "rottening down now." Record on Appeal, p. 111, lines 9-10 [hereafter, "R. 111/9-10"]. *See* photographs of the house, Def. Exh. A, Supp. R. 129–35.

[7] R. 94 & Supp. R. 29/23–30/5.

[8] Supp. R. 44/2-5 & 45/22–46/8. Exh. 74, R. 306.

[9] Exh. 74, R. 306; Supp. R. 9 & Supp. R. 24; Supp. R. 46/2-14. Weldon's disingenuous testimony that the money was a gift [R. 112/2-5] is belied by the judgment. Weldon stiffed Mrs. Wilcox for the cost of the house.

[10] R. 95 & Supp. R. 8.

[11] Exh. 12, R. 171.

[12] R. 95 & Supp. R. 8; Supp. R. 37.

[13] Supp. R. 14/13-16.

Sharon moved to Ridgeland a short time later.[14]

Danny Henderson, a Hampton lawyer, moved into the house in about 1980 with Harold Wall's permission.[15] The appellant casts doubt upon the truth of Harold's testimony, credited by the circuit court in this law case, that Mr. Henderson sought and obtained Harold Wall's permission to occupy the house. Mr. Henderson is an attorney whose office is in Ridgeland, a short distance from the courtroom.[16] The appellant could easily have called him to refute Harold's testimony but did not. This failure to call leads to an adverse inference or, at the least, undermines the appellant's attack upon the credibility of testimony accepted by the finder of fact.[17]

Harold testified[18] that he wanted no rent for this isolated structure, fabricated at Mrs. Wilcox' expense. Any rent which Harold and J.W. might have charged would have been trivial in relation to the income and expenses associated with the management of Roseland Plantation.[19]

Weldon testified that Mr. Henderson paid rent, not to Weldon but to his ex-wife, Sharon.[20] Weldon could have had no personal knowledge of this. No documentary evidence was offered,[21] nor was the testimony of any person with personal knowledge — most notably, Mr. Henderson himself.

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[14] Supp. R. 27.

[15] Order, p. 25, 4th subpart of ¶ F(II)(1), R. 29.

[16] *See* S.C. LAWYERS DESK BOOK (2020-21 ed.), p. 219.

[17] The circuit court reiterated its credibility findings on page three of its Order of August 30, 2019, R. 41, denying appellant's motion to alter or amend.

[18] Supp. R. 49/9-14.

[19] There is no evidence of what the rental value might have been in 1980 for this isolated dwelling at the end of a dirt road in one of this state's poorest counties, but it could not have been much.

[20] Tr. I, p. 62 [omitted from Record in error].

[21] Order, p. 25, ¶ F(II)(1), R. 28–29.

In 1985 Luke Brown, a Ridgeland attorney, moved into the house with his wife,[22] also with Harold Wall's permission,[23] and lived there for fifteen years.[24] The same lack of credible evidence about the payment of rent[25] applies here.

Weldon asserts repeatedly that these supposed rent payments to his ex-wife were spousal support, paid in Weldon's behalf. There is not a particle of evidence to this effect. The Walls' divorce decree was not offered in evidence, probably because it says nothing of the kind.

Weldon asserts repeatedly that Henderson at first and then the Browns were his "tenants" or his "nominees". Having sold his half-interest in Roseland to his brother J.W. and moved away, Weldon owned nothing to rent and could have had no "tenants". Danny Henderson and Luke Brown, both of them lawyers, would have known that Weldon owned no part of Roseland.[26]

Next, Weldon's son, Weldon Jr. ("Dondi"), and his family lived there until 2009.[27] Dondi testified that he paid rent to his mother, Sharon, not to his father, Weldon.[28] If any of this testimony is to be believed, it would have been Sharon, not Weldon, nursing a claim for adverse possession.

When the well which served the house and several other buildings on Roseland played out during this time, Harold paid for the installation of a new well.[29] There is no evidence that Weldon ever did anything after he sold out in 1977 which would be done

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[22] R. 115.

[23] R. 127/13-17.

[24] R. 115/4-11.

[25] R. 115.

[26] Mr. Brown handled the 1977 sale by Weldon to J.W. *See* Exh. 12, p. 3, R. 173.

[27] R. 115/25–116/2.

[28] R. 115/6-9.

[29] Def. Exh. B, Supp. R. 136. Supp. R. 39–40.

by a person claiming ownership of the ten acres.

By the time of trial in 2019, the dilapidated house had been vacant for ten years[30] and was in a tear-down condition.[31]

In 1995 Weldon built a new house on the Fickling tract, adjacent to Roseland.[32] Harold lent Weldon at least $79,000 to build this new house.[33] Weldon failed to repay this loan,[34] now time-barred,[35] just as he failed to repay Mrs. Wilcox for the cost of the house on the ten acres.

Thus, Weldon today owns a house built at his brother Harold's expense — though not the house he now claims.

B. The sale by Weldon to J.W.

On April 12, 1977, Weldon conveyed his half-interest in Roseland to has brother J.W. Wall.[36] Weldon testified that his half-interest in Roseland belonged thereafter to J.W. absolutely, free of trust.[37]

Weldon testified variously that he conveyed his interest to J.W. because the Federal Land Bank mortgage on Roseland was in foreclosure[38] or to avoid creditors.[39]

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[30] Supp. R. 33/20-24; Supp. R. 38. No one had stayed overnight for more than six years. Supp. R. 31.

[31] Order, pp. 24–25, ¶ F(II)(1), R. 28–29.

[32] Supp. R. 15/23–16/2. The three Wall brothers inherited the Fickling tract from their father and own it as tenants in common. Supp. R. 41.

[33] Supp. R. 15–22; Supp. R. 41 & 44; Exhs. 65 & 66, R. 300–01. Order, pp. 28–29, ¶ G(1), R. 32–33.

[34] R. 95/16-21.

[35] Order, p. 29, R. 33.

[36] Exh. 12, R. 171.

[37] Supp. R. 6, 11, 13; R. 104; Supp. R. 47. *See* Exh. 53, R. 271.

[38] R. 125/3-8; Supp. R. 47. *See* Exh. 97, Supp. R. 127, and Order, ¶ 10, R. 14.

[39] Supp. R. 4.

J.W. brought the mortgage up to date,[40] and Harold reimbursed J.W. when he was able.[41] J.W. testified that "if Weldon gave him his money back, he would give it back to him at any time."[42]

Weldon's testimony was confused on every material fact. Weldon sometimes testified that his conveyance to J.W. was a gift.[43] At other times he testified that he sold his interest to J.W.[44]

This conveyance was no gift. The deed was drawn and the transaction handled by appellant's father-in-law.[45] Even an experienced conveyancer may negligently misstate the consideration, but "$143,372.96" is no typographical error. Affixing $287 in deed stamps to a conveyance intended as a gift would not only be a waste of $287. It would also be misleading and perhaps contrary to statute. This is not to be believed, and the circuit court did not believe it.[46] Weldon sold his half-interest in Roseland, including the ten-acre parcel at issue, to his brother J.W. in 1977, and thereafter denied under oath on every occasion that he owned any of Roseland.[47]

If Weldon did receive the recited consideration from J.W., it was a windfall. Harold, not Weldon, paid the great majority of the purchase price for Roseland.[48] A $40,000 loan was taken out to pay for the final parcel purchased, but this money

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[40] Supp. R. 5/14-21.

[41] Order, ¶ 11, R. 9. Supp. R. 47/12–48/1. Exh. 13, R. 175.

[42] Supp. R. 36/1-6. Supp. R. 34/18-21 (appellant's counsel in colloquy). Exh. 98, Supp. R. 128.

[43] Supp. R. 5/14-21.

[44] Supp. R. 8/6 & 12/22. *See* R. 110 (not received any cash "to my knowledge").

[45] Exh. 12, probate, R. 173.

[46] Order, ¶ 10, R. 4–5, & ¶ 36(b), R. 19–20.

[47] Order, ¶¶ 19-21, R. 12–14. Supp. R. 6, 11, 13. *See* Exh. 53, R. 271.

[48] Order, ¶ 8, R. 8, & ¶¶ 16-17, R. 11–12. Supp. R. 50; Exh. 90, Supp. R. 125.

somehow ended up in Weldon's pocket.[49] This legerdemain almost certainly far exceeded anything Weldon might have paid to the seller.[50]

C. The 2014 suit.

The appellant filed an action for ownership of the ten acres in 2014 but dismissed the suit before it was served.[51]

Three years later, Weldon Wall Jr. ("Dondi") demanded that his Uncle Harold convey the subject ten-acre parcel, not to his father but to himself. He explained that his father "won't mind."[52] Harold refused this baseless demand.[53]

Weldon Jr. then forced his father to bring this action.[54]

ARGUMENT

The circuit court's rejection of the adverse possession claim is supported by evidence.

A. None of the elements of adverse possession were proved.

The appellant cast his complaint as an action to quiet title — an equitable action. *Perry v. Heirs of Gadsden,* 313 S.C. 296, 437 S.E.2d 174, 176 (Ct. App. 1993), *partially reversed on other grounds,* 316 S.C. 224, 449 S.E.2d 250 (1994). Labels aside, however, the substantive nature of the claim is not to quiet the title but to acquire it by adverse possession. An adverse possession claim is an action at law. *Jones v. Leagan,* 384 S.C. 1, 681 S.E.2d 6, 11 (Ct. App. 2009); *Miller v. Laird,* 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992).

The appellant's "Statement of Issues on Appeal" is limited to a claim for adverse

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[49] Order, ¶ 8, R. 8. Exh. 31, R. 210, & Exh. 73, Supp. R. 61. Supp. R. 2–3 & 35.

[50] R. 124. *See* Supp. R. 10/14-21.

[51] Order, ¶ 31, R. 18. Supp. R. 1/14-21. Exh. 60, Supp. R. 51–59, and Exh. 62, Supp. R. 60.

[52] Tr. I, pp. 209-10 [omitted in error].

[53] Supp. R. 38/7-14.

[54] Tr. I, pp. 210–11 [omitted in error] & Supp. R. 32.

possession.[55]

The elements of adverse possession have never changed:

> "The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time." [*Jones v. Leagan,* 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009.] In South Carolina, the statutory period for adverse possession is ten years. S.C. Code Ann. § 15-67-210 (2005) ; *Jones,* 384 S.C. 1, 10, 681 S.E.2d 6, 11. A party asserting ownership by adverse possession must show he has met the elements by clear and convincing evidence. *Jones*, 384 S.C. at 10–11, 681 S.E.2d at 11.

Taylor v. Heirs of Taylor, 419 S.C. 639, 650-51, 799 S.E.2d 919, 924-25 (Ct. App. 2017). If even one of the necessary elements of an adverse possession claim fails, the claim fails. The circuit court found that none of the elements were proved.

Weldon Wall's occupation of the parcel at issue began in 1973 when he owned a half-interest in Roseland. Cotenants have an equal right to possession. His occupation was by right and not hostile to his cotenant — especially a family member — unless hostility were clearly brought home. There is no evidence of hostility toward his cotenant. Just the opposite, as Weldon claimed that Harold had agreed to convey his half-interest when requested.

The appellant has never identified the time when his initial occupation as a co-owner allegedly turned hostile. After four years in the house, he sold his half-interest in Roseland to his brother J.W. in 1977 and moved away. It is unprecedented for a claim of adverse possession to begin when the claimant sells his half-interest in the very property at issue and leaves.[56]

In this close family, the brothers J.W. and Harold were not going to order their former sister-in-law and her pre-teen children off the property when Sharon divorced

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[55] At one point in the brief the appellant adverts to a twenty-year "right by prescription". There is no contention that the appellant acquired any right by prescription.

[56] As the seller delivers the deed, he tells the vendee that now begins my claim of adverse possession.

Weldon and he left. The only reasonable inference is that Sharon's continued dwelling there was by permission of the owners.

When Sharon moved to Ridgeland in 1980, the appellant's only remaining family link to the property ended. All that remains of his claim is the allegation that later occupants of the house — Henderson and the Browns — paid rent to his ex-wife, and that these alleged rent payments were made in appellant's behalf as ex-spousal support, of which there is no evidence.

The appellant proved none of the elements of adverse possession:

1. Continuous possession.

Weldon's possession ended after four years.[57] Even crediting him on some theory unknown with his ex-wife Sharon's continued occupation for three years longer,[58] ten years' possession was not reached.

The two occupants for the next twenty-odd years sought and obtained Harold's permission, not Weldon's, to live on the property. Both were lawyers who probably knew that Weldon was constantly saddled with judgments, did not own the property, and had no right to authorize occupancy.

The element of continuity is absent.

2. Hostile possession.

Weldon contended that he entered into possession of the ten-acre parcel as a cotenant and as equitable owner of his brother Harold's half-interest under an oral, executory agreement to convey. There is no element of hostility here.

In a tenancy in common, the possession of one cotenant is the possession of all. *Freeman v. Freeman,* 323 S.C. 95, 473 S.E.2d 467 (Ct. App. 1996). Thus, to establish title against a cotenant by adverse possession, a cotenant "must overcome the strong presumption that he holds possession in recognition of the cotenancy." *Id.* "Ouster is

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[57] R. 95 & Supp. R. 14/13-16. Supp. R. 37.

[58] Supp. R. 27/11-14.

the actual turning out or keeping excluded a party entitled to possession of any real property." *Id.* at 99, 473 S.E.2d at 470. "Actual ouster of a tenant in common by a cotenant in possession occurs when the possession is attended with such circumstances as to evince a claim of exclusive right and title and a denial of the right of the other tenants to participate in the profits." *Id.* To establish ouster, a cotenant's actions must be unequivocally hostile to the rights of the other cotenants while the intention to disseize is clear and unmistakable. *Felder v. Fleming,* 278 S.C. 327, 330, 295 S.E.2d 640, 642 (1982); *Knight v. Hilton,* 224 S.C. 452, 456, 79 S.E.2d 871, 873 (1954); *Fender v. Heirs at Law of Smashum,* 354 S.C. 504, 581 S.E.2d 853 (Ct. App. 2003). A claim of adverse possession against one's siblings is "an unconscionable claim, that the court should not sustain, except upon a clear preponderance of the evidence." *Whitaker v. Jeffcoat,* 128 S.C. 404, 122 S.E. 495, 496 (1924).

Four years after building the house, Weldon sold his interest in the house and in all of Roseland to his brother J.W. for $143,000, and moved away. In none of this is there an ouster of his former cotenant, Harold.

When Harold attempted to negotiate a sale of Roseland to a developer, including the ten acres at issue, Weldon was aware of it but made no protest.[59] An adverse possessor would have objected.

3. Open possession.

Weldon's possession while it lasted was open, but is was the open possession of a cotenant. As an element of a claim of adverse possession, the open possession must be openly hostile to the rights of the owner. Weldon's possession was by right as a co-owner until he sold out in 1977 and moved away.

4. Actual possession.

Weldon's claim is not just to the house and its curtilage but to a ten-acre parcel

[59] Order, ¶ 18, R. 12.

shown on a 1973 plat[60] as color of title. Weldon left the house in 1977, never to live there again.[61] Weldon's occupation under color of the ten-acre plat ended after four years. There is no evidence that any of the successive occupants during the next twenty-odd years made any claim to the ten-acre parcel or knew anything about the plat which depicted it. These people occupied only the house.

> It is axiomatic that a party claiming title by adverse possession must show the extent of his possession. *Butler v. Lindsey,* 293 S.C. 466, 361 S.E.2d 621 (Ct. App. 1987). * * * It is well settled that "[w]hile color of title draws the constructive possession of the whole premises to the actual possession of a part only, and is evidence of the extent of the possession claimed, it is not of itself evidence of adverse possession, and it does not follow that adverse possession can be proved by less evidence when the entry is under color of title than when it is not." *Id.* at 470, 361 S.E.2d at 623.

Clark v. Hargrave, 323 S.C. 84, 473 S.E.2d 474, 476-77 (Ct. App. 1996).

There is no evidence of constructive possession — adverse or otherwise — of the ten acres by the appellant for the minimum ten years.

5. Notorious possession.

Notoriety refers to the perception in the neighborhood of the possessor's claim to ownership. As with the element of openness, the notoriety required for adverse possession means *notoriously hostile.* If hostility was known to all in the neighborhood, it must have been known to the true owner. "[T]he requirement of notoriety of the adverse holding is to establish general notice to all, which is only equivalent to and takes the place of direct proof of actual notice to the true owner." *Love v. Turner,* 71 S.C. 322, 51 S.E. 101, 104 (1905).

There is no evidence here of any such notoriety in the neighborhood that the house was being adversely possessed by Weldon, Sharon, Danny Henderson, Luke Brown, or Weldon Jr. during their successive habitations.

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[60] Exh. 10, R. 164.

[61] Supp. R. 37.

6. Exclusive possession.

Respondent Harold Wall was a cotenant of the ten-acre parcel during the four years of brother Weldon's occupancy. The possession of one cotenant is the possession of all. *Freeman v. Freeman,* 323 S.C. 95, 99, 473 S.E.2d 467, 470 (Ct. App. 1996); *Fender v. Heirs at Law of Smashum,* 354 S.C. 504, 512, 581 S.E.2d 853 (Ct. App. 2003). Weldon's possession was Harold's possession.

There is no evidence that Weldon tried to exclude Harold from the parcel at any time during the forty-four years that this saga has played out. For example, when a new well was needed to service the house in 2004, it was Harold, not Weldon, who paid for it.[62] An adverse possessor would pay for his own well. Respondent paid the taxes on the ten acres at issue — and all the rest of Roseland — for all those forty-six years,[63] and has treated Roseland as his own throughout.[64] This is not the behavior of an ousted cotenant.

* * * * *

The circuit court's findings of fact are reasonably supported by evidence and therefore conclusive. There was no adverse possession.

B. The appellant's misconduct would bar relief, even if the claim had been proved.

The circuit court found the appellant's claim barred on several grounds, the strongest of which is appellant's misconduct in concealing his claim from creditors.[65]

A debtor who manipulates his affairs so as to hide his assets from creditors receives no help from a court of equity. *See, e.g., Gordon v. Lancaster,* 425 S.C. 386, 823 S.E.2d 173 (2018). *See also:* S.C. Code Ann. § 27-23-10(A) (Statute of

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[62] Def. Exh. B, Supp. R. 136. Supp. R. 40.

[63] Order, ¶ 32, R. 18. Exh. 87, Supp. R. 62–124.

[64] Order, ¶ 32, R. 18.

[65] Supp. R. 25–26; R. 113. Exh. 95, Supp. R. 126. *See* Supp. R. 7/17-21.

Elizabeth). This policy is not designed to benefit the manipulator's adversary but to protect the integrity of the judicial system.

This misconduct manifested itself most clearly when the appellant filed bankruptcy in 1994 without disclosing his claim to what by then must have been a claimed interest in property on deep water worth far more than in 1973.[66] The bankrupt is thereafter precluded from pursuing the claim which he hid from his creditors. *In re Iredale,* 429 B.R. 853 (Bankr. D.S.C. 2010).[67]

The appellant excuses this fraud by suggesting that his creditors would not have pursued his claim to the ten acres. The appellant belittles the value of his claim by pointing out that Roseland, including the ten acres, was mortgaged in 1994. Now that

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[66] Order, ¶ 30, R. 17–18.

[67] *Accord: SunTrust Mortgage, Inc. v. Lanier,* Op. No. 2019-UP-310 (S.C. Ct. App. filed Aug. 28, 2019):

> *In re Iredale,* 429 B.R. 853, 856 (Bankr. D.S.C. 2010) ("Generally, however, the failure to disclose a suit or cause of action existing at the time of bankruptcy against a third party, in a debtor's bankruptcy proceeding, prevents that debtor from pursuing that undisclosed lawsuit."). * * * Appellants in this case marked "none" where they were required to list as personal assets any "other contingent and unliquidated claim of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims." *See Wilson* [*v. Dollar Gen. Corp.*, 717 F.3d 337, 341 (4th Cir. 2013)]; *see also MidFirst Bank* [*v. Brooks*], Op. No. 2008-UP-196 (S.C. Ct. App. filed Mar. 20, 2008) (affirming the master's summary judgment order as properly "based on the determination that [the debtor] lacked standing to assert the defenses and counterclaims that she raised in her responsive pleadings" because she "inadvertently" failed to disclose them in her Chapter 13 bankruptcy action).

Id. at 6. Respondent respectfully suggests that the Court should publish this useful opinion. Rule 268(d)(2), SCACR, states that unpublished opinions "should not be cited," but this rule is more honored in the breach than in the observance. The Court itself in *SunTrust* cited another unpublished opinion. For a thoughtful condemnation of the no-citation rule, *see* Charles E. Carpenter, "The No-Citation Rule For Unpublished Opinions," 50 S.C.L. REV. 235 (1998).

the respondent has paid off all the mortgages and the value has greatly increased,[68] the appellant seeks to cash in.

The bankruptcy trustee could have negotiated with the mortgagees for a release of the ten acres on mutually agreeable terms.[69] Weldon himself testified that the Federal Land Bank would have released its lien on the parcel at issue years earlier, if he had asked.[70]

In any case, these decisions were for the bankruptcy court, its agents, and the bankrupt's creditors to make, not for the bankrupt petitioner to preclude by nondisclosure, hoping to cash in later. The appellant waited forty-four years before his son forced him to bring this action. This is twenty-three years after the appellant's nondisclosure deprived his bankruptcy creditors of the opportunity to seek this same relief.

C. The action is time-barred.

No South Carolina case appears to have accepted a claim after an intentional delay of such a length. *See*: *Robinson v. Estate of Harris,* 388 S.C. 616, 627, 698 S.E.2d 214, 221 (2010):

> Petitioners waited thirty-nine years to assert their rights regarding the 1966 quiet title action. We find such a flagrant and egregious delay represents the quintessential situation that the doctrine of laches was intended to protect. For this Court to hold otherwise, we would have to affirmatively reject this well-established equitable doctrine.

In the case of *Robinson v. Estate of Harris,* 391 S.C. 114, 118-19, 705 S.E.2d 41, 43-44 (2011), our supreme court quoted with approval the circuit court's order:

> [The plaintiffs] sat idly by for a period in excess of fifty-five (55) years * * * knowing that they may have a right in the [subject property]. * * * It has been almost sixty (60) years

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[68] *See* Order, ¶ 18, R. 12, and Supp. R. 23/4-5.

[69] In fact, the mortgages were satisfied the next year. Exhs. 40 & 42-50 [omitted in error].

[70] Supp. R. 42/23–43/3.

> since the real property that is the subject of this action was conveyed to Ellis Pinckney. There is no provision in the Code of Laws of South Carolina that accords anyone the right, legally or equitably, to bring an action sixty (60) years after the fact.

The court concluded: "Respondents' inaction for many decades constitutes laches." *Id.* at 119, 705 S.E.2d at 44. *Accord: Hemingway v. Mention,* 228 S.C. 211, 89 S.E.2d 369 (1955) (thirty-five year delay; equity aids the vigilant, not those who sleep on their rights).[71]

Treating this action as one for recovery of real property or its possession, the circuit court found it time-barred by both S.C. Code Ann. § 51-3-340 (ten years) or S.C. Code Ann. § 15-3-380 (forty years).[72] *Robinson v. Estate of Harris,* 391 S.C. 114, 119, 705 S.E.2d 41, 43-44 (2011).

The appellant has offered no reason why those time limits do not apply.

D. The appellant's brief contains many unsupported factual claims.

The appellant's initial brief contained few citations to the trial record as required by Rule 208(b)(4), SCACR. The respondent moved to require the appellant to supply such citations. The appellant filed an amended initial brief containing citations, mooting the motion.

Many of the factual statements made in the appellant's amended brief remain unsupported by cites to the record. This must mean that, in the face of the respondent's motion, the appellant could find no support in the record. These statements include, among others:

- The appellant repeatedly claims that Henderson and the Browns paid rent to appellant's ex-wife, Sharon, at appellant's "direction" as spousal support in his behalf. There is not a shred of evidence in support.

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[71] A delay of thirteen years appears to mark the outer boundary of any South Carolina case rejecting the laches defense. *Wall v. Huguenin,* 305 S.C. 100, 406 S.E.2d 347 (1991), *reversing Wall v. Huguenin,* 301 S.C. 94, 390 S.E.2d 372 (Ct. App. 1990).

[72] Order, ¶ 36(d), R. 20–21.

- The appellant repeatedly characterizes Henderson and the Browns as his "tenants" or his "nominees". There is no evidence that he had anything to do with their dwelling in the house. The circuit court found as a fact that they were there with Harold's permission.

- The appellant claims that he paid almost all the consideration for the purchase of Roseland and that Harold paid almost nothing. The circuit court found the opposite.

- The appellant states that in 2015, Harold made it clear to Weldon that he would receive no deed to the ten acres. It was not Weldon but his son, Weldon Jr. ("Dondi"), who demanded a deed to himself, not to his father, and who forced his father to bring this action when Harold rejected Dondi's unfounded demand.

CONCLUSION

Since the circuit court's factual rejection of the claim is amply supported by evidence in this law action, it is conclusive.

The respondent therefore urges the Court to affirm.

Respectfully submitted,

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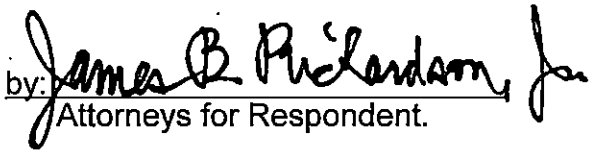
by: 
Attorneys for Respondent.

December 11, 2020.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2019-001448

Weldon E. Wall, Sr., ... Appellant,

v.

Harold H. Wall, Sr., ... Respondent.

CERTIFICATE OF COUNSEL

I certify that respondent's final brief complies with Rule 211(b), SCACR.

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December 10, 2020.