

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Edgar W. Dickson, Circuit Court Judge

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MAR 16 2021

Appellate Case No. 2019-001676
Trail Court Case No. 2018-CP-07-1559

SC Court of Appeals

Charles E. Houston Jr.....Appellant,

v.

Shirley J. Boone, as Administrator of the Estate of Dean B Bell, individually;
Law Offices of Dean B. Bell, LLC; and
B. Hammel Properties, LLC,.....Defendants,

Of which Law Offices of Dean B. Bell, LLC and
B. Hammel Properties, LLC, are the.....Respondents.

BRIEF OF THE APPELLANT CHARLES E. HOUSTON JR

March 12, 2021

Charles E. Houston Jr.
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Office: 843-715-9078
Appellant, *Pro Se*

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STATEMENT OF ISSUES ON APPEAL

I

Did the court err, in ruling that cause of action in a collateral attack proceeding to set aside an order as void upon its face is subject to the affirmative defenses of estoppel, statute of limitations and laches?

II

Did the court err, by abusing its discretion, by awarding summary judgment not applying the correct standards in dismissing plaintiff's cause of action for extrinsic fraud brought under SCRPC, Rule 60(b) (4) and (5); upon the grounds of the affirmative defenses of estoppel, statute of limitations and laches by not applying the date the tenancy in common was dissolved, the "discovery rule" and the standard of reasonableness.

III

Did the trial court abuse its discretion as a matter of law by not properly applying the standards under South Carolina Rules of Civil Procedure Rule 60 (b) (4) and (5) when it ruled that plaintiff's cause of action for extrinsic fraud did not present a triable issue?

IV

Did the Court err by abusing its discretion by awarding summary judgment to the defendants upon plaintiff's cause of action for extrinsic fraud when there was factual support in the record establishing each element of this cause of action.

V

Is the Order of the Master in Equity in the partition action void as exceeding the subject matter jurisdiction of the court as conferred by the applicable state statutes?

VI

Is the Order of the Master in Equity in the partition action void as its provisions disenfranchises plaintiff's fundamental property rights as protected under the constitutional provisions and guarantees of Amendment 14 of Article 1 Section 3 of the United States Constitutions and Article 1 Section 3 of the Constitution of South Carolina?

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STATEMENT OF THE CASE

This action(*Case# 2018-CP-07-01559*) was commenced by the filing of the Lis Pendens, Summons and Complaint (*R. pp 115-132*) on July 31, 2018.(Plaintiff's Motion to add a Party Defendant was filed on February 12, 2019 and Motion to Compel to the Defendant Bell and the Bell law firm on May 9, 2019. Defendant B. Hammel Properties, LLC filed its Motion for Summary Judgment on February 13, 2019 (*R. pp 150-151*) and Defendant Dean B. Bell, individually and as attorney for the Bell Law firm filed a joint Motion for Summary Judgment on April 3, 2019. (*R. pp 142-143*) Both Motions for Summary Judgment was heard on June 10,2019.(*R. pp.178-186*) The Court's orders granting summary judgment to the defendant B. Hammel Properties (*R. pp. 94-103*)and to the defendant Bell and the Bell Law Firm (*R. pp 104-114*)were filed on September 4, 2019 and served on September 5, 2019 and received on September 9, 2019. The plaintiff filed and served his Notice of Appeal on October 2, 2019 that was filed on October 8, 2019.(*R. pp 7-9*)

The partition proceeding *Cornelia H. Hall et. at. v. Charles E. Houston Jr.*(*Case # 2011-CP-07-05141*) was commenced by the filing of the Lis Pendens, Summons and Complaint on December 7, 2011.(*R. pp 424-431*) The defendant filed a Notice of Appearance on January 11, 2012 and his Answer on February 14, 2012. (*R. pp 432-433*) Plaintiff filed their Motion for Summary Judgment and for Reference on

June 4, 2012 (*R. pp. 446-459*) and was heard on August 10, 2012. Defendant moved in open court to have the case dismissed. An Order of Reference and for the Complaint to be amended was filed on September 4, 2012. (*R. pp. 422-423*) An "Amended Complaint" (*R. pp. 434-439*) according to the Clerk of Courts Public Index (*R. pp. 130-132*) was never filed with the court but was served upon the defendant who filed and served his answer on November 12 2012. (*R. pp. 440-441*) A hearing was held before the Master in Equity on May 22, 2013. A Final Order of the Master-in Equity was filed on July 19, 2013. (*R. pp. 414-419*) The Defendant's Motion for Reconsideration was filed on July 30, 2013 (*R. pp. 442-445*) and denied by Order of the Master in- Equity on September 11, 2013. (*R. pp. 420-421*) the Defendant filed his notice of Appeal on September 27, 2013 (*R. p. 467*) and a Remittitur from the Court of appeals was filed on March 10, 2013. (*R. p. 412*) The property was sold on June 23 2015 (*R deed pp. 460-462*) and a memorandum Order ending the case was filed by the Master in Equity on July 22, 2013. (*R. p. 413-*)

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FACTS

This action in the nature of a declaratory action to quiet title to real property is Plaintiff's collateral attack on a decision entered in a separate partition action 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 private 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 his complaint, Houston alleges 1) that the Master in Equity in the Partition Action lacked jurisdiction in the absence of an Order of Reference. 2) That the Master in Equity's decision in the Partition Action, was contrary to previous rulings entered by the Circuit Court from the Bench 3) The relief awarded in the Partition Action was beyond and in excess of the subject matter jurisdictional authority of the Master in Equity to award. and 4) The decision in the Partition Action violated the Houston's Federal and State Constitutional rights. 5) (Additionally, Houston sought to have the Master in Equity's Order set aside as procured by extrinsic fraud committed by plaintiff's counsel and his law firm.

THE HISTORY OF THE CITY OF BOSTON

1790

The history of the city of Boston is a subject of great interest and importance. It is a city of many centuries, and its history is a record of the growth and development of a great metropolis. The city was founded in 1630, and since that time it has been a center of commerce, industry, and culture. Its history is a story of the struggle for freedom and independence, and of the triumph of the American spirit. The city has been a witness to the great events of the American Revolution, and it has played a leading part in the history of the United States. Its history is a record of the growth of a great city, and of the progress of a great nation.

Upon these allegations, Houston requests that this Court set aside the transfer of his one fourth interest in the real property that passed to the Defendant through the partition process and award Houston damages for the wrongfully taking of property from him.

The defendants answered, denying the substantive allegations and afterwards each Defendant filed their separate Motion for Summary Judgment, which was granted by the Court. From this judgment the Plaintiff filed an appeal to this Court.

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STANDARD OF REVIEW

The defendants have presented this case in the posture of a motion for summary judgment; thus, it is governed by South Carolina Rules of Civil Procedure Rule 56(c) SCRCP. 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)

Once the moving party carries its initial burden, the opposing party must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. Id.; Rule 56(e), SCRCP. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d L 3 (2006). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived

of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr. Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

When a circuit court grants summary judgment on a question of law, this court will review the ruling de novo." Wright v. PRG Real Estate Mgmt., Inc., 426 C. 202, 212, 826 S.E.2d 285, 290 (2019).

When the trial judge is vested with discretion, but his ruling reveals no discretion was in fact, exercised, an error of law has occurred." Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987); see also In re Robert M. 294 S.C. 69, 70-71, 362 S.E.2d 639, 640-41 (1987); State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

ARGUMENT 1

The Court erred in ruling that the plaintiff's causes of action were timed barred by estoppel, laches and the statute of limitations.

The action below is a declaratory action seeking to quieting the title to the plaintiff's fee simple title to one fourth undivided interest in the property subject to this action as a tenant in common. The impediment or cloud upon his title is a warranty deed (*R. pp. 460-462*) made from Cornelia H. Hall to B. Hammel Properties , LLC on June 23, 2015 pursuant to the purported authority granted to her by an Order (*R. pp. 414-419*) issued by the Master in-Equity on July 19, 2013 in Partition Action (*2011 -CP -07 05141*). This order ruled for the property to be sold by private sale and further provided that Cornelia H. Hall, a sibling, and the partitioning plaintiff, be granted the sole authority, without requiring further judicial review, to determine the purchase price of the property and further forbidding the Appellant herein from participating in any manner pertaining to the sale of his interest in the property. The Appellant, in the action herein, seeks to vacate this judgment asserting that this order is void on its face (see argument IV and V *infra*) as it exceeds beyond the subject matter jurisdiction granted by statute to the Master-in -Equity.

The trial judge did not, in his order, reach or touch upon the issue of the validity of the *order* (R. pp. 414-421) when he dismissed the claim on the grounds of laches or lack of timeliness in the claim being brought. When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987); see also In re Robert M., 294 S.C. 69, 70-71, 362 S.E.2d 639, 640-41 (1987); State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). This issue though is a jurisdictional one and may be raised for the first time even upon an appeal.

It is a long-standing legal axiom that an order void for lack of subject matter jurisdiction is void *ab initio*. The doctrine of laches is an equity concept and is invoked when two essential elements exist: 1) a delay (2) that is inexcusable or unreasonable in instituting suit, and (3) prejudice resulting to the defendant from such delay. Robinson v. Estate of Harris 388 S.C.616, 686 S.E.2d 214 (S. Ct. 2010.) None of these elements were established by affidavits in support of the defendants' motion for Summary Judgment. Nevertheless, in the Robinson case, where laches was successful pleaded as a defense to set aside a judgment, it was upon a finding of a delay for 39 years. More particularly, it was imposed where the plaintiff had moved to set aside a prior judgment on the grounds of extrinsic fraud where the three (3)

years Statute of Limitations under §15-67-90 Code of Laws of South Carolina was invoked. The Appellants cause of *action* herein to set aside the prior judgment stands upon a separate superseding footing; a judgment void on its face.

Though there are no reported cases in South Carolina that has addressed this point it has been well established and consistently upheld and adhered to in every jurisdiction when the issue has been presented that the affirmative defenses of laches, estoppel, waiver, bona fide purchaser for value, res judicata, collateral estoppel and the otherwise relevant statute of limitations do not apply to and action to set aside a judgment void on its face that may be collaterally attacked at any time. See 49 C.J.S. Judgments 710 (2020, Peet v. Peet 16 Va. App 323, 429 S.E.2d 487(1993) ruling that although, generally, judgment must be challenged on direct appeal rather than attacked collaterally, void judgment maybe assailed at any time by direct or collateral attack. Subsequent cases citing Peet are Hazraty v Hazraty 2007 WL 3052550 Va. Cir. Ct. and Ononu:u v. Virginia Housing Development Authority 2019 WL 6468617. Also, Hill v. Walker 297 KY.257, 180 S.W. 2d. 93, 154 ALR 814 citing Brown v. Administrator 232Ky. 336 23 S. W. 2d 551 holding that a void judgment is no judgment at all, and no rights are acquired by virtue of its entry of record. A court may, in a proper proceeding vacate it at any time, the lapse of time is no bar to such

relief, citing Brown's Administrator v. Gabhart 232 Ky.336, 22 5. W.2d 551; Johnson v. Carroll, 190 Ky. 689, 228 5. W.412; Gardner v. Lincoln Bank & Trust Co., 251 Ky.109, 64 5. W.2d 497.

Additional authority is drawn from the California cases of Renoir v. Redstar 123 Cal, App.4th 11 45 (2004) where the court ruled "That a judgment or order that is invalid on the face of the record is subject to a collateral attack. It follows that it may be set aside on motion with no limit on the time within which the motion may be made".

Likewise, further authority is elicited from two cases decided in Illinois. In LVNV Funding, LLC v. Price 32 NE. 3rd 553 (2015) citing Sarkissian v. Chicago Board of Education, 201 Ill.2d 95, 104 (2002) ruled that when the trial court enters a void judgment, a party aggrieved by the judgment may attack it by motion without showing diligence. The rationale underlying this rule the court's opinion stated is "that the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence".

It is well settled acceptable law for over 172 years that if a court is without authority its judgments and orders are regarded as nullities. They are not voidable , but simple void; and form no bar to a recovery sought, even prior to a reversal in opposition to them They constitute no justification ; and all persons concerned in executing such judgments are considered, in law, as trespassers. Elliot v. Piersol, 1 Pet 328, 34026

U.S. 328,340(1828). Likewise, in the case of Reynolds v. Volunteer State life Ins. Co.

Therefore, the Court below was in error in allowing the defendants defense of laches to apply to and excluding Appellant's claim that the Master-in Equity's order exceeded the statutory subject matter jurisdictional powers conferred upon a Master-in Equity court and a ruling "De Nova" may be made by this court on this point of law.

ARGUMENT 2

The trial court committed an abuse of discretion as a matter of law and erred in ruling that the Appellant's causes of action for extrinsic fraud was time barred by the affirmative defenses of the three years statute of limitations, estoppel and laches.

The court erred in the following particulars:

First: The Statute of Limitations would not begin to run until the dissolution of the tenancy -in- common held among the four siblings. (See Les Pendens) This occurred when the property was sold on June 23, 2015 and the deed recorded of record on July 17, 2015 . See Knots v Joiner, 217 S.C. 99, 59 S.E.2d 850 (S.Ct. 1950) (R. Deed pp. 460-462)

Second: Under the Discovery Rule the statute of limitations would be extended until the time the Appellant knew or should have reasonably known that a cause of action had accrued.(*R. Depo. p. 338 L 16-20, p.340 L 8-14*)

Third: The collateral attack upon the judgment was brought under SCRCP, Rule 60(b) (4) and (5) where the required standard is a "reasonable time".

Fourth: There is no case law jurisprudence that has ever sanctioned the proposition or notion that the affirmative defenses of laches or estoppel or "reasonable time" would elapse or transpire prior to the running of the three years Statute of Limitations.

Fifth: The tenancy in common was dissolved by the recording of the deed on July 17, 2015 (*R. Deed pp. 460-462*) and this action was commenced by the filing of the summons and complaint on July 31, 2018. (*R pp. 115-132*)

Sixth: That from July 17, 2015 to July 31, 2018 is a period of 3 years and 10 days.

Seven: At his deposition(*R Depo. Houston, p. 272 L 23*) Appellant testified that he was residing in Houston, Texas and it was not until weeks after the property had been sold when he came to check on his boat and automobile that had been stored on the property that he discovered them missing and when he reported this to the Sheriff Department he was told that the property had been sold. (*R. Depo.p .*

352 L 13-14) This would have been during August 2015 and within the statute of limitations period and within a reasonable time period. SCRCP, Rule 60(b)(5) applied in Lewis-Murray v. Murray 2005 WL 70084812. The court below exercised the incorrect standard as a matter of law and the period of over four hundred days found by the court is clearly erroneous as this court ruled in Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct.App.2003) that "Although motions under Rule 60(b)(5) are not subject to the requirement that they be filed within one year of the judgment, they still must be filed within a reasonable time. While we are reluctant to proclaim that four years is a per se unreasonable period of time,

With the statute of limitations shown to have been erroneously granted, Appellant will next address the court's error in not finding a triable issue on plaintiff's cause of action for extrinsic fraud,

ARGUMENT III

The Court abused its discretion and erred as a matter of law by improperly applying the proper and required standard for a Motion for summary judgment under SCRCP, Rule 60 (b) (4) and (5) as to plaintiff's cause of action against the defendant Bell and his law firm.

The defendants presented their case in the posture of a motion for summary judgment; thus, it is governed by South Carolina Rules of Civil Procedure Rule 56(c) SCRPC. This rule provides a motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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.

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). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. *Id.* Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Id.*; Rule 56(e), SCRPC.

It appears from the court's order that once it had reached the impression that the plaintiff- appellant's causes of actions were time barred and therefore dispositive of the case the bulk of the order merely

recited conclusions of law. Additionally, the defendants-respondents' motion for summary judgment was open ended and broad applying to every allegation in the complaint without any direct specificity to any particular cause of action.

A factual issue is 'genuine if it is not capable of being conclusively foreclosed by reference to undisputed facts. Although there may be genuine disputes over certain facts, a fact is material when its existence facilitates the resolution of an issue in the case. Material facts tend to prove or disprove a disputed fact that is relevant to the outcome in a case.

In this action the plaintiff seeks to set aside the Order of Partition under SCRCP, Rule 60 (b) (4) and (5), on the grounds of extrinsic fraud committed by the defendant, Dean B. Bell and The Bell Law Firm. Fraud is generally defined as the intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right. "Extrinsic fraud" is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief from judgment is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action or is fraud that induces one not to present a case

in court or deprives one of the opportunity to be heard or is not involved in the actual issues. Robinson

The plaintiff below adequately through his Deposition, (R. pp. 267-370) Affidavit, (R. pp. 180-186) Memorandum of Law, (R. pp. 178-179) Exhibits (R. pp. 195-228) supplemented with his oral arguments; set forth enough

evidentiary facts as triable issues in support of each required element for extrinsic fraud.

The Plaintiff's Affidavit (Affidavit, (R. pp. 180-186) with exhibits sets

forth a more complete rendition of the evidentiary facts constituting a triable factual issue.

The following salient facts were the following:

1. The present defendant in the action herein and the plaintiffs' attorney in the underlying case (Case 2011-CP-07-05141) intentionally (R. Depo p. 299 L 16-25-P 321 L 14-15) did not serve his motion for summary judgment and for Order of reference upon plaintiff at his correct address but at an incorrect P O Box address (R. p. 453)(R. p. 228) to defendant's deposition of the plaintiff, March 2019.) The plaintiff's address 31 Marshland Road, the address referred to in plaintiffs' complaint and also the address registered of record with the Clerk of Courts and inserted in defendants answer and responsive pleadings. (R. pp. 448)

This deceit prevented the defendant the opportunity to preparing for the hearing on the motion and submitting a written return to it.

That at the hearing held before the Circuit Court in the Hall v Houston (Case 2011-CP-07-05141) underlying case the defendant pleaded an oral demurrer to the complaint on the grounds that the action could not proceed as a private sale as he objected to it and that the issues pertaining to rents, occupancy of the premises payment of taxes were within the jurisdiction of the Probate Court and that the partition action should proceed only as a judicial public sale and not a private sale. (*R Depo p. 330 L 21-25*)

That the Court's ruling in open court was that instead of dismissing the complaint it would permit the complaint to be amended.(Order of Reference) (*R. Order-pp. 422-423*)

2. That plaintiffs' counsel submitted a proposed order to the court not including the complete ruling of the Court.

3 A copy of the plaintiffs' proposed order was not furnished to the defendant though the cover letter to the judge reflected that it had. The defendant's deceitful practice prevented and denied the Appellant the opportunity to alert the court of the discrepancies within the proposed order relating to the Probate Court and confining the partition action to a public sale; leaving the court to falsely conjecture or reasonably assume that the defendant was in consent with its contents.

4. The plaintiff's counsel never served a copy of the filed Order of Reference upon the defendant, thereby, again denying him the opportunity to seek the modification of a previously issued Circuit Court order.

5 This Order filed on September 4, 2012 among other items provided for an Order of Reference and the filing of an amended complaint and though filed with the court, was not within the files of the Clerk of Court up to the time of the hearing of defendants motion for summary judgment in June 2019. (*R Affidavit of Plaintiff p. 182 Par 10- p. 184-185 Par. 20*)

6 That this Order of Reference was not referred to or recited in the Master of Equity's Final Order (*R. Order pp. 414-419*) and was not available to be entered of record at the hearing.

7 That at the time the plaintiff in the collateral action herein filed his complaint in this present action he knew nothing of the existence of this order as reflected in his alleging its non-existence in the complaint. (*R. Complaint pp. 115-132*)

8 The Public Index for Beaufort Count maintained by the SC Judicial Department reflects that the Plaintiff's Amended Complaint was never filed with the Clerk of Court though a purported copy was served upon the Appellant. (*R. Public Index pp. 130-132*)

9 That the defendant discovered in the process of searching for the Order of Reference in the Clerk's file a document containing plaintiff counsel's notes and mathematical calculations that had not been introduced into evidence at the hearing before the Master in Equity and wrongfully placed within the Court's file. (*Removed from Record*)

The factual inference reasonable drawn from act is that the Master-in Equity in his review and examination of the evidentiary exhibits in his preparation for ruling upon the case would be improperly and wrongfully influenced by the contents of these foreign materials that had not been admitted into evidence; reasonable believing the item had been properly admitted into evidence. This wrongful act denied the Appellant the opportunity to respond to the contents of these materials placed in the file.

10 The plaintiff's first awareness of the Order of Reference was in March 2019 during the taking of his deposition when a copy of the filed order was presented to him without the Certificate of Service annexed to it. (*R Depo pp. 299 L 16- pp. 301 L 25*)

11 That the amended complaint filed by the plaintiff's counsel was an exact duplicate of its original complaint saving the word "amended".(*R. complaint pp.. 424-431*) (*R. Adm Comp. pp 434-439*)(*R. Hearing p. 408 L 16- p. 409 L 1-7*) This was in noncompliance and in further disobedience to the circuit Court's order, a fraud upon the court and the defendant was extremely

detrimentally prejudiced by this extrinsic fraud by having to appear at the hearing not expecting, and not prepared, to address issues that were not to be raised at the hearing. By deceitfully not amending the complaint made null and void in effect the order of the Circuit Court.

12. Though this was brought to the Master in Equity's attention at the commencement of the hearing there was no Order of Reference in the Court's file for him to examine.

13 Plaintiff's counsel, with the intent to induce the Master in Equity (the Master was hoping the parties could reach an agreement) to consent to his submitting a proposed order upon the Reference Hearing, through email transmission falsely stating to the Master -in Equity that his clients (defendant's siblings) had not heard from the defendant since the hearing. (R. Email *pp.* 83-86) The truth is the sibling sisters had been in touch and had presented an offer for the defendant to purchase their combined $\frac{3}{4}$ interest for \$650,000.00. However, what was more germane was that this was an *exparte* communication with the court by plaintiff's counsel that was camouflaged by inserting defendants incorrect e-mail address (R. Email *pp.* 83-86). The correct email address was known to plaintiff's counsel from the defendants contact information that were inserted on the pleading and motion documents. (R. *MOI form p.* 448) When the proposed order was submitted to the Master again it was copied to the defendant's incorrect e-mail

address. (*R. Email pp. 83-86*) Repeatedly, like the prior practice of the plaintiffs' counsel, this fraud upon the court and the defendant was extremely detrimentally prejudiced by this extrinsic fraud by it being subtly but wrongfully and incorrectly communicating to the Master in Equity that the defendant found the proposed order to his consensual satisfaction wherein it was detrimentally adverse to and a hinderance to him advancing his interest in the case. This exparte communication denied the defendant the opportunity before the judge signed the drafted order with the merits of his objections to the order being: 1) that it could only be sold at public sale 2) the provision in the order anointing and granting Cornelia H. Hall with powers to convey the interest of the other interest holders would not legally convey their interest and that this relief had not been alleged and prayed for in the complaint, that no testimony had been received or proffered on that issue and the same would be in excess and beyond his subject matter jurisdiction. This opportunity was denied.

14. The proposed order was so hastily drafted by plaintiff's counsel that he failed to insert the jurisdictional premises upon which the master in Equity acquired jurisdiction: The Order of Reference! (*R. order pp. 414-419*)

15 One of the pertinent reasons Appellant withdrew his appeal to the SC court of Appeals in the partition action was the nondisclosure

of the identity of the court reporter who was hired by plaintiffs' counsel to transcribe the hearing held before the Master-in -Equity. (*R. Depo. p.307 L 18-24*) This information upon Appellant's request was not provided by Plaintiff's counsel or his staff. During the hearing on the Defendant's Motion for Summary Judgment this issue was raised and discussed. Plaintiff's counsel represented to the Court that he did not hire the court reporter and that the court reporter who was present was the Master-in Equity's full time or permanently assigned reporter. (*R. Hearing p. 409 L7- p. 410 L4*) This is not true and not accurate and can be easily confirmed by the Courts who have immediate and direct access to the records.

Relief from judgment is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action. *Robinson v. Estate of Harris*, 2010 388 S.C. 630, 698 S.E.2d 222 (S.Ct. 2010)

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla

of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 5.C. 326, 330, 673 S.E.2d 801, 803 (2009). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Lanham v. Blue Cross & Blue Shield of S.C., 349 5.C. 356, 362, 563 5.E.2d 331, 333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

Argument IV

The Court erred by abusing its discretion and not exercising it discretion in finding as a matter of law that the Master -in-Equity order was void upon its face by ordering the property to be sold at public rather than public sale over Appellant's objection

The order of the Master in Equity is void upon its face for the following reasons:

First: The Order, upon its face, does not set forth or recite or render notice of the jurisdictional prerequisite basis upon which the Master of Equity acquired jurisdiction of the case such as an Order of Reference.

Second: The Order does not set forth specific findings of fact and conclusions of law as required by § 1 -23 -350 Code of Laws of South Carolina and what is purported to be ordered is left blank.

Third: That § 14-11-160, Code of Laws of South Carolina does not confer subject matter jurisdiction to the Master -in Equity to order that property be sold at private sale and he lacked the authority to so absent the consent of all the parties.

§ 14-11-160. Reads as follows: *Master may sell real estate in any county under order by consent.*

Whenever real estate is adjudged to be sold by a master such sale may take place by consent of the parties to the cause or their attorneys or, when infants are parties, by the consent of the guardians ad litem of such infants or their attorneys in any county which the court may direct. All such sales heretofore made and otherwise valid are hereby confirmed.

Third: The order exceeded the statutory subject matter jurisdiction of the Master in Equity by providing for the appointment and selection of Appellant's sister, the plaintiff, petitioner, in the partition action; granting her the sole authority to exclusively transact and

negotiate the terms of sale and title transfer of the appellants interest without any time constraints or further court approval rendered the order void as being in excess of the statutory powers conferred on the Master in Equity. A judgment in excess of a court's jurisdiction is a lack of subject matter jurisdiction that can never be presumed, never be waived and cannot be constructed even by mutual consent of the parties.

ARGUMENTV

The order of the Master-in Equity is in derogation of Appellant's constitutional guarantees as provided by Article 1 § 3 of the South Carolina Constitution.

Paragraph 14 of the Order in part states the following:

"That she (Cornelia H. Hall) be authorized on behalf of all owners to sign any contracts, any deeds, any settlement documents, and other documentation associated with the sale and that her signature on the deed shall be sufficient to bind all parties and no other owners will need to sign any documents associated with the sale. The order did not provide for judicial approval of the sale or set any time or price parameters.

There is no statutory power granted or vested in the Circuit Court or by reference to a Master in Equity in South Carolina that grants it subject matter jurisdictional powers and authority under the partitioning of land statutes to disenfranchise the property rights of a citizen of South Carolina, other than that as provided by § 27 5-1-100 and § 27-7-10-40 Code of laws of South Carolina absent a proceeding in foreclosure, tax sale, escheat, forfeiture under penal statute, ward's estate, or marital property division under the authority granted to the Family Courts. Even in Family Courts, it's orders state that that a property shall be conveyed by one marital party to another leaving it to the party to execute the required deed of conveyance. Here the Appellant has not executed any deed to Cornelia H. Hall, and she acquired none of Appellants interest in the property to convey to a third party. The required practice in actions to quiet title and in partitioning proceedings is for each person to convey their title interest into a trust or mutually quit -claim their interest when done by allotment or each tenant in common convey their interest to a third-party grantee. No statutory provision exists for interest in land be transferred by court order which acts only in persona. Only a conveyance by deed from the owner transfers title except for the statutory exceptions noted above. The deed from Cornelia H. Hall to Hammel properties, LLC therefore did not convey any of Appellant's interest in the property to them because

appellant never conveyed his one fourth (1/4" interest to Cornelia H. Hall and the purported authority appearing upon the face of the order granting her authority to do so is void as granted beyond the subject matter jurisdiction of the Master in Equity.

The jurisdictional authority of the Master-in-Equity Court in partition actions are set forth in §14-11-160, *Master may sell real estate in any county under order by consent.*

Whenever real estate is adjudged to be sold by a master such sale may take place by consent of the parties to the cause or their attorneys or, when infants are parties, by the consent of the guardians ad litem of such infants or their attorneys in any county which the court may direct. All such sales heretofore made and otherwise valid are hereby confirmed.

Therefore, there is no statutory authority in South Carolina permitting the sale of property by private sale without the consent of the parties. There are two states that permit and authorize private sales but only by statutory enactment.

ARGUMENT VI

Void judgments under federal law, which is applicable to all states, are ones in which the rendering court lacked subject matter jurisdiction over dispute or jurisdiction of the parties or acted in manners

inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment. U.S.C.A. Constitution Amendment 5, Hays v Louisiana Dock Co. 452 N.E. 2d 1383 (Ill. App.5 Dist. 1983) Article 1 § 3 of the SC Constitution grants and protects all its citizens and citizens of the United States from being denied the privileges and immunities of citizens shall not be abridge nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. Property rights are among the most basic rights in our free democratic State of South Carolina. Basic property rights include, but not exclusively, the right to exercise dominion and occupy in exclusion of others . the right to earn income, the right to transfer property to another and the right to enforce property rights.

The order of the Master in Equity without setting a minimum sales price for the property, not requiring judicial approval of the sales price, not setting any time parameters in which the for the property would be sold left and granting all Appellants property rights in abeyance or in indefinite perpetual perpetuity and providing Hall the opportunity to engage in outside sales arrangements separate and not disclosed in the contact of sale each singularly and collectively to the detriment of the Appellant's proprietary interest exceeded the subject matter jurisdiction of the Master in Equity rendering it's order void upon its face.

Therefore, the order on its face capriciously and arbitrarily denied Appellant of a substantive due process by depriving him of a cognizable property interest rooted in state law in violation of Article 1 §3 of the South Carolina Constitution and U.S.C.A. Constitution Amendment 14: Constitution Article,1, § 3. See Paris Mountain Water Co, v. City of Greenville 110 S.C. 36, 96 S.E. 545 (S.Ct.1918). Wilson v Greenville County 110 S.C. 321, 96 S.E. 301(S.Ct. 1918) Hearon v. Caius 178 S.C. 381, 183 S.E. 13 (S.Ct. 1935) Gebhardt v. McGintv et. al. 243 S.C. 495, 134 S.E.2d 749 involving public service district acting beyond its constitutional limitation.

The legal principle that an order in excess of the subject matter jurisdiction of a court is well settled in South Carolina and in national and federal jurisprudence. Treon et.al. v. Dryvit Systems, et.al. 2009 WL 10245237 Court of Common Pleas Beaufort County (2009) finding that the Master in equity acted outside the scope of the Order of Reference. Commissioner v. McCoy 484 U.S.3, 108, (S. Ct 217 1987) finding that the US Court of Appeals exceeded its jurisdictional authority. Lubben v. Selective Service System Local Board No.27 453 F2d 645, 14 A.L.R. Fed. 298 (1stCircuit1972) the Court stated that a void judgment is to be distinguished from an erroneous one, in that the latter is only subject to direct attack. Avoid judgment is one which from its inception, was a complete nullity and without legal effect. Wells Fargo Bank v. Smith 398

S.C. 487, 730 S.E.2d 328(Ct. App.2012) this court held that a reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it citing Skinner v Skinner 257 S.C. 274 S.C. 544, 549,-50, 186 S.E. 2d 523, 526.

This court well stated this proposition of law in the case of Yarbrough v. Collins, 290 S.C. 76, 348 S.E.2d 194 citing Edgerton v. Muse 13 S.C. Eq. (Dud. Eq.) 179 (1838) where the court stated " A judgment can be impeached, however in a collateral proceeding upon proof of fraud or lack of jurisdiction citing Riker v. Vaughn, 23 S. C. **187(1885)**.

A judgment may not be rendered in violation of constitutional protections extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. Henson V. Denckla, 357 U.S. 235, 2 L.ed 2d 1283,78 S. Ct. 1228. Also, all proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur., Judgments 44.

The Appellant, in a recapitulation manner, summarized the collection of errors committed in the referenced proceeding below.

The Court below erred in holding upon Respondents" Motion for Summary Judgment that the Appellant's cause of action to set aside the

order of the Master in Equity as void on the grounds of it being in excess of the Master -in Equity court' s subject matter jurisdiction. This is a question of law, and void judgments are not subject to any applicable statute of limitations estoppel or laches defenses and may be collaterally attacked at any time; even for the first time upon an appeal. The order, on its face, failed to state how the Master-in Equity acquired jurisdiction of the case, made only a rumbling recitation of the testimony taken at the hearing without categorizing specific finding of fact and conclusions of law and leaving what was purported to be ordered blank. The purported authority granted to Cornelia H. Hall, to at her sole whim and conjecture, contract for Appellants interest in the property at any future time by private sale without the necessity of Court approval, along with the authority to convey his interest without the necessity of his executing a deed did not conform with the South Carolina statutory requirements for conveying title to real property. Additionally, this action and Cornelia Hall subsequently making a conveyance of the property constituting a wrongful alienation of property rights as protected by the Federal and SC Constitutions. As a matter of law the deed purporting to convey the Appellants interest in the property should be Ordered to be set aside along with the order of the Master in Equity as void; leaving the Appellant still possessing a one-fourth interest as a tenant in common in the property subject to this action.

Conclusion

The Court is requested to rule as a matter of law that the Court below erred in finding that the affirmative defenses of laches , estoppel and the statute of limitations were applicable applied, that it rule as a matter of law that the Master-in Equity Court exceeded its subject matter jurisdiction in authorizing the sale of the property be sold by private sale; and that the deed signed by Cornelia H. Hall is void and to be set aside as far as it purports to convey the one fourth interest owned by the Appellant. and the cause of action for extrinsic fraud be remanded back to the Circuit court for trial upon those issues.

Respectfully submitted,



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