



### PETITIONER'S ALLEGATIONS

Petitioner seeks to reform the legal description to a deed recorded in the Spartanburg County Register of Deeds Office on December 11, 2001 in Deed Book 74-X at Page 343 (hereinafter "Deed") based upon a clerical error such that the legal description is amended to convey only "Part Lot 11/0.33 acres" as shown on a plat of a survey recorded in the Spartanburg County Register of Deeds Office on March 7, 2005 in Plat Book 157 at Page 582. Said deed was executed by the Petitioner at a closing that occurred on December 6, 2001 (Petition, ¶ 3, 5, 7; Petitioner's Motion for Dec. Judgment, 5, 7).

### STANDARD OF REVIEW

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Rule 12(c), *SCRPC*. A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

### LAW

South Carolina Ann. § 15-3-340 states that "[n]o action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the

plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.”

Furthermore, “[l]aches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” *Mid-State Trust, II v. Wright*, 323 S.C. 303, 474 S.E.2d 421 (1996); *Hallums v. Hallums*, 296 S.C. 195, 371 S.E.2d 525 (1988); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct.App.1999). Laches is an equitable doctrine, which arises upon the failure to assert a known right. *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.*, 358 S.C. 209, 235, 595 S.E.2d 253, 267 (Ct.App.2004). Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. *Muir* at 296, 519 S.E.2d at 599. The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums* at 199, 371 S.E.2d 525, 371 S.E.2d at 528; *All Saints* at 235, 595 S.E.2d at 267. *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004)

### **CONCLUSIONS OF LAW**

Respondent’s Answer asserts the ten (10) year Statute of Limitations set forth in S. C. Code §15-3-340 (1976) and the equitable doctrine of laches as an absolute bar to Petitioner’s claim to amend the legal description of the Deed. The closing of the transaction which is the subject of the Petitioner’s Complaint took place on or about December 6, 2001. The Deed and the mortgage in favor of Respondent MidFirst Bank were recorded on or about December 11, 2001. The Petitioner institute this action on July 7, 2020, nearly nineteen (19) years after the closing. Therefore,

pursuant to the ten (10) year Statute of Limitations set forth in S. C. Code Ann. §15-3-340 (1976),  
Petitioner's complaint is untimely and procedurally barred.

The equitable defense of laches also bars the claim given the Petitioner's delay in the enforcement of his rights. The Court finds that the Petitioner has failed to timely assert a known right or one that should have been discovered; that the delay in filing the Petition was unreasonable; and, that the Respondent would sustain prejudice if relief was granted since, *inter alia*, she has been paying ad valorem taxes for the property claimed by Petitioner since 2001.

Based upon the foregoing, IT IS HEREBY ORDERED, ADJUGED, and DECREED that the Plaintiff's Petition be dismissed with prejudice.

IT IS SO ORDERED.

***JUDGE'S SIGNATURE PAGE TO FOLLOW***



Spartanburg Common Pleas

**Case Caption:** Larry Bright VS Heather D Davis

**Case Number:** 2020CP4202447

**Type:** Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065