RECEIVED
May 17 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY AND DORCHESTER COUNTY

Court of Common Pleas

Patrick R. Watts, Special Referee

Appellate Case No. 2020-001489

John Murray Gibbs, ……. Respondent,

vs.

Henderson Gibbs, Jr., ……. Appellant.

RECORD ON APPEAL

P. Brandt Shelbourne, Esq.
John T. Kornegay, Esq.
SHELBOURNE LAW
131 East Richardson Ave.
Summerville, SC 29483
(843) 871-2210 (p)
(843) 875-2224 (f)
Counsel for Appellant

John Murray Gibbs, Respondent v. Henderson Gibbs, Jr., Appellant

INDEX TO RECORD ON APPEAL

I. ORDERS/JUDGMENTS PAGE

Order for Reference to Special Referee, filed in Dorchester Court of Common Pleas, February 18, 2016……0001

Consent Order for Reference to Special Referee, filed in Colleton Court of Common Pleas, March 14, 2016……0005

Final Order filed in Colleton Court of Common Pleas, July 16, 2020……..0010

Final Order, filed in Dorchester Court of Common Pleas, July 17, 2020…… 0032

Order on Defendant's Motion to Set Aside Judgment, filed in Colleton Court of Common Pleas, October 7, 2020……...0053

Order on Defendant's Motion to Set Aside Judgment, filed in Dorchester Court of Common Pleas, October 8, 2020……...0064

II. PLEADINGS

Summons and Complaint and Lis Pendens filed in Colleton Court of Common Pleas, April 6, 2015……0075

Summons and Complaint and Lis Pendens filed in Dorchester Court of Common Pleas, April 8, 2015……0083

Answer of Henderson Gibbs, Jr. filed in Colleton Court of Common Pleas, on September 24, 2015……...0093

Answer of Henderson Gibbs, Jr. filed in Dorchester Court of Common Pleas, on September 24, 2015……...0094

Plaintiff's Notice of Motion and Motion for Order of Reference to Special Referee, filed in Dorchester Court of Common Pleas, December 16, 2015……0095

Plaintiff's Notice of Motion and Motion for Order of Reference to Special Referee, filed in Colleton Court of Common Pleas, January 19, 2016……0098

Notice of Hearing, filed in Dorchester Court of Common Pleas,

November 14, 2019……0102

Defendant's Motion to Set Aside Judgment, filed in Dorchester Court of Common Pleas and filed in Colleton Court of Common Pleas, July 24, 2020……..0106

Exhibit A - Statement of Rene Fritz, P.A.C. and Mark Suzuki, M.D. dated 07/22/2020…….0109
Exhibit B – Affidavit of Henderson Gibbs, Jr……...0111

Notice of Appeal, filed in Dorchester Court of Common Pleas and filed in Colleton Court of Common Pleas, November 6, 2020……..0120

III. EXHIBITS AND OTHER MATERIALS

Communications from Special Referee, Patrick Watts dated December 3, 2020…….0192

IV. CERTIFICATE OF COUNSEL…….0210

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-18-707

JOHN MURRAY GIBBS

FILED - RECORDED
2016 FEB 18 PM 12:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

HENDERSON GIBBS, JR.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: ANDREW T. SHEPHERD, ESQUIRE	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2112
Judge Code

2-2-16
Date

For Clerk of Court Office Use Only

This judgment was entered on **2/18/2016**, and a copy mailed first class or placed in the appropriate attorney's box on **2/18/2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Andrew T. Shepherd PO Box 130 Summerville, SC 29484

ATTORNEY(S) FOR THE PLAINTIFF(S)

Henderson Gibbs Jr 939 Old Graniteville Highway Aiken, SC 29801

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter: Melissa Singletary

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) CASE No. 2015-CP-18-707

FILED - RECORDED
2016 FEB 18 PM 2:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JOHN MURRAY GIBBS,

Plaintiff,

vs.

HENDERSON GIBBS, JR.,

Defendant.

ORDER FOR REFERENCE
TO SPECIAL REFEREE

THIS MATTER is before me upon the Plaintiff's Motion for Order of Reference to Special Referee pursuant to Rule 53, SCRCP. This is an action for partition of two parcels of real property located in Dorchester County, State of South Carolina. Plaintiff seeks an Order of Reference appointing Patrick R. Watts, Esquire, a member of the South Carolina Bar, as Special Referee to exercise all power and authority which a Circuit Judge sitting without a jury would have in a similar matter. Plaintiff asserts that a similar action for partition of a parcel of real property is also pending in the Court of Common Pleas for Colleton County between the same parties, and that in the interests of judicial economy, has sought reference to and the appointment of Patrick R. Watts, Esquire, as Special Referee for purposes of hearing both partition actions without severing venue as to either matter. At the hearing on Plaintiff's Motion, the Defendant agreed to refer the matter to Patrick R. Watts, Esquire, as Special Referee, and to share equally in the costs of the Special Referee. By his written consent appearing in the Court's file, Patrick R. Watts, Esquire, has agreed to the appointment in this matter.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that this matter be and the same is hereby referred to Patrick R. Watts, Esquire, as Special Referee, to take testimony, make findings of fact and conclusions of law, and with the further authority to enter final judgment.

IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the parties shall share equally in the costs of the Special Referee unless otherwise ordered by this Court.

IT IS SO ORDERED!

Honorable Diane S. Goodstein
Circuit Court Judge

~~January~~ 22, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	CASE No.: 2015-CP-15-454
JOHN MURRAY GIBBS,	)	
	)	
Plaintiff,	)	CONSENT
vs.	)	ORDER FOR REFERENCE
	)	TO SPECIAL REFEREE
HENDERSON GIBBS, JR.,	)	
	)	
Defendant.	)	

2016 MAR 14 PM 12:12
COLLETON COUNTY
COMMON PLEAS

THIS MATTER is before the Court upon the Plaintiff's Motion for Order of Reference to Special Referee pursuant to Rule 53, SCRCP, with the consent of the Defendant. This is an action for partition of real property located in Colleton County, State of South Carolina. Plaintiff seeks an Order of Reference appointing Patrick R. Watts, Esquire, a member of the South Carolina Bar, as Special Referee to exercise all power and authority which a Circuit Judge sitting without a jury would have in a similar matter. By his signature below, the Defendant consents to the same.

A similar action for the partition of real property is also pending in the Court of Common Pleas for Dorchester County between the same parties, and that in the interests of judicial economy, Plaintiff, with the consent of the Defendant, has sought reference to and the appointment of Patrick R. Watts, Esquire, as Special Referee for purposes of hearing both partition actions without severing venue as to either matter. By his written consent appearing in the Court's file, Patrick R. Watts, Esquire, has agreed to his appointment in this matter.

#1
PRB

THEREFORE, upon the Motion of the Plaintiff and with the consent of the Defendant, it is hereby:

ORDERED, ADJUDGED and DECREED that this matter be and the same is hereby referred to Patrick R. Watts, Esquire, as Special Referee, to take testimony, make findings of fact and conclusions of law, and with the further authority to enter final judgment; and,

FURTHER ORDERED, ADJUDGED and DECREED, that the parties, by their consent, shall share equally in the costs of the Special Referee unless otherwise ordered by this Court.

IT IS SO ORDERED!

Presiding Judge, Court of ~~Common~~ Pleas
Fourteenth Judicial Circuit
Perry M. Buckner

Walterboro, South Carolina
~~January~~ March 4, 2016.

I SO MOVE:

Andrew T. Shepherd
Hart Hyland Shepherd, LLC
P.O. Box 130
Summerville, SC 29484
(843) 410-0711
(843) 302-8329 fax
andrew@hartfirm.com
Attorney for Plaintiff

I SO CONSENT:

Henderson Gibbs, Jr.
939 Old Graniteville Highway
Aiken, SC 29801
(803) 648-1921
Defendant, *Pro Se*

#2

STATE OF SOUTH CAROLINA COUNTY OF COLLETON JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT) CASE No. 2015-CP-15-454 CONSENT TO APPOINTMENT AS SPECIAL REFEREE

PATRICIA C. GRAU
COLLETON COUNTY
COMMON PLEAS
2016 JAN 19 AM 10:13

I, Patrick R. Watts, Esquire, a member of the South Carolina Bar, consent to appointment as a Special Referee pursuant to Rule 53, SCRCP, as is more fully set forth in Plaintiff's Motion for Reference, to exercise all power and authority which a Circuit Judge sitting without a jury would have in a similar matter.

Respectfully Submitted,

Patrick R. Watts, Esquire
P.O. Box 2046
Summerville, SC 29484
843-851-7050
pat.watts@wattslawfirmpa.com
SC Bar No.: 5975

#3
PRW

Summerville, South Carolina
January 8, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	CASE NO.: 2015-CP-15-454
JOHN MURRAY GIBBS,	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	
HENDERSON GIBBS, JR.	)	
Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Andrew T. Shepherd, Esq., Bar No. 76859	_____, Bar No. _____
Address:	Address:
P.O. Box 130, Summerville, SC 29484	_____
Phone: 843.410.0711 Fax 843.302.8329	Phone: _____ Fax _____
E-mail: andrew@hartfirm.com Other:	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — March 10, 2016 Date submitted

SECTION III: Motion Fee

☒ PAID AMOUNT: $ $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE: _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED - AMOUNT DUE: $ _____

2016 MAR 14 PM 12:12
PATRICIA C. HANNI
COLLETON COUNTY
COMMON PLEAS

SCCA 233 (11/2003)

HHS
HART HILAND SHEPHERD

March 10, 2016

Via US Mail
Colleton County Court of Common Pleas
Attn: Clerk of Court
P.O. Box 620
Walterboro, SC 29488

RE: John Murray Gibbs v. Henderson Gibbs, Jr.
Case No.: 2015-CP-15-454

Dear Clerk of Court:

Enclosed, please find the original and two (2) copies of a ***Motion Coversheet and Consent Order for Referenced to Special Referee***, pursuant to the above referenced matter. The Consent Order has already been executed by Judge Buckner. Upon receipt, please file and return the clocked copies to our office in the self-addressed, stamped envelope provided. Should you have any questions or request any further information, please feel free to contact our office at the number provided below.

With warmest regards, I remain

Respectfully,

Cierra Richards
Paralegal to Andrew T. Shepherd, Esquire

cr
Enclosure(s): as stated
Cc: Patrick R. Watts, Esquire (via US Mail)
Client (via US Mail)
Henderson Gibbs, Jr. (via US Mail)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-15-454

JOHN MURRAY GIBBS — PLAINTIFF(S)

HENDERSON GIBBS, JR. — DEFENDANT(S)

Submitted by: Andrew T. Shepherd	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Henderson Gibbs, Jr.	John Murray Gibbs	$N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317. The interests of John Murray Gibbs being allotted unto Henderson Gibbs, Jr. by entry this Order such that Henderson Gibbs, Jr. is the sole title holder of record.

TMS No. 154-00-00-088

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

~~Circuit Court Judge~~
Special Referee
Patrick Watts

N/A
Judge Code

July 15, 2020
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

THIS MATTER is before me for partition of real property identified as Colleton County TMS No. 154-00-00-088 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 6, 2015 in the Colleton County Court of Common Pleas in case number 2015-CP-15-454, and for partition of real property identified as Dorchester County TMS No. 129-16-00-012 and Dorchester County TMS No. 130-13-00-050 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 8, 2015 in the Dorchester County Court of Common

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Pleas in case number 2015-CP-18-707. Pursuant to the Consent Order for Reference entered in this matter by the Honorable Perry M. Buckner on March 14, 2016 in the Colleton County Court of Common Pleas, and also by the separate Order for Reference to Special Referee entered in the Dorchester County Court of Common Pleas by the Honorable Diane S. Goodstein, I was appointed to serve as Special Referee to hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment. As the matters before me concern identical issues affecting the rights of the parties' in and to their shared ownership interests in separate parcels of real properties, which issues and shared interests further necessitate balancing the equities between them, the cases were heard together and judgment is hereby entered accordingly.

THE COLLETON COUNTY PROPERTY & CAUSE OF ACTION

The Colleton County property subject to this action, and generally known as Colleton County TMS No. 154-00-00-088, is more fully described as:

> ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317.
>
> TMS No. 154-00-00-088

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Consent Order entered March 14, 2016. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

THE DORCHESTER COUNTY PROPERTY & CAUSE OF ACTION

The Dorchester County Property subject to this action, and generally known as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050, is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Order entered February 18, 2016, which Order reflects that at the hearing thereon, Defendant agreed to the reference and my appointment. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.[1]

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the law pertaining to cases of this subject matter and the credibility of the testimony and evidence before me, I make the following findings of fact and conclusions of law:

1. Plaintiff and Defendant hold title to each Property as tenants in common. All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments. S.C. Code Ann. § 15-61-10 (A). Although the Property at issue would constitute heir's property pursuant to the Clementa Pinckney Uniform Partition of Heir's Property Act ("Act") enacted in 2017, this matter was commenced prior to enactment of the Act and is therefore not subject to the Act's requirements. 2016 Act No. 153, Section 6, provides "[t]his act takes effect on January 1, 2017, and applies to partition actions filed on or after that date." Notwithstanding the inapplicability of the Act's partition procedures, this Court still has jurisdiction to enter judgment for partition whether in kind or by allotment under the remaining provisions of Title 15, Chapter 61, South Carolina Code of Laws. "The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or

[1] The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case and thus indicating he was clearly aware the matter was scheduled.

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." S.C. Code Ann. § 15-61-50. For the reasons more fully explained below, after fully accounting for waste, betterments, and rents among cotenants, and balancing equities between them, I find and conclude under the facts and evidence presented in this case that partition by allotment can be fairly and impartially made as to each Property without injury to any of the parties in interest. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude that the right of first refusal provided for nonpetitioning tenants in common by S.C. Code Ann. 15-61-25(A) was timely and properly noticed by the Plaintiff, and the Defendant did not exercise that right.

2. All three properties are residential in nature and are owned solely by the Plaintiff and Defendant. Appraisal reports by William Ford of Appraisal Services of South Carolina, Inc., were admitted into evidence, without objection, and are uncontroverted for purposes of establishing the fair market value of the respective properties, detailing their condition and characteristics, and supporting the Plaintiff's representations as to the non-viability for partition in-kind. The uncontroverted testimony received by the Court reflects that following the conveyance of the properties to the Plaintiff and Defendant, the Plaintiff generally provided for the upkeep, maintenance, and taxes for the time period spanning 1997 through 2006, at which time Plaintiff moved to the State of New York. Following Plaintiff's move to New York, his visits to South Carolina were severely limited, and his ability to inspect and maintain the properties on a routine basis was hampered. In the years that followed, the Defendant, on his own accord and

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

through the assistance of his son, began to control and generally manage the properties by renting them to third parties—all without consultation or approval of the Plaintiff.

The Colleton County property is located in the Ridgeville, South Carolina, area on Camp Buddy Road and consists of approximately 1.9 acres, with a garage reportedly damaged by fire and another shed. The property is currently unoccupied, but a manufactured home was previously on the property which the Defendant rented to tenants for a number of years. However, the manufactured home was removed from the property and Defendant alleged to the Plaintiff that the same had burned. No rents were ever shared with the Plaintiff. The appraised fair market value of the property as of November 22, 2019, immediately prior to the hearing, is $26,650.00 or $13,500.00 per acre.

The Dorchester County properties are located at 205 North Maple Street and 187 Pigeon Bay Road in the Town of Summerville. The property at 205 North Maple Street is approximately 0.65 acres and consists of an approximately 2,005 square foot brick home, a small detached garage, as well as a manufactured home situated behind the primary house structure. The property at 187 Pigeon Bay Road is approximately 0.25 acres and consists of an approximately 1,083 square feet wood siding house, a shed, and an approximately 1,300 square foot garage/shop-like structure. Both properties are currently occupied by tenants placed by the Defendant or present thereon through the Defendant's son.

The 205 North Maple Street property is the home where both the Plaintiff and Defendant were raised as children. It is the Plaintiff's strong desire to see the home preserved and the property maintained and protected as it has great sentimental value to both him and his family. However, the uncontroverted testimony from the Plaintiff and the witnesses reflects that almost immediately after the Plaintiff moved to New York, the Defendant unilaterally and without Plaintiff's

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

permission converted the interior of the North Maple Street property so as to create a boarding house for roomers. Testimony of the witnesses and notations from the appraisal reflect that the property's condition is below average and had been allowed to deteriorate in some respects. As of the date of the final hearing, the property had been continuously rented a boarding house for not less than ten years at a weekly rental rate of $150.00 per tenant in the primary home, and $150.00 per tenant in the manufactured home. According to the Plaintiff, at all times for a period of no less than ten years, the property has been continuously occupied by at least five tenants paying weekly rent, and sometimes as many as seven tenants or more. The Defendant and the Defendant's son place these tenants in the property and collect all of the rents. No rents have ever been shared with the Plaintiff, and Plaintiff's attempts to gain routine entry to the property or to take back control at various times over the years have been rebuked by the Defendant and by those acting through him. Even when present upon the property, the Defendant's continuing placement of roomers/tenants and modifications to the condition in the property have rendered Plaintiff unable to use the property as a home or to peaceably enjoy his family's homestead as single family home.

The Pigeon Bay Road property is also occupied by tenants placed in the home by the Defendant or the Defendant's son. It is the uncontroverted testimony that the primary home on the Pigeon Bay Road property is currently rented to a third party who pays $800.00 per month in rent, which payments are believed to be made to the Defendant's son. Defendant has also erected a large detached garage/shop-like structure wherein third parties are known to socially congregate and loiter for what Plaintiff and Plaintiff's witnesses have come to learn is typically alcohol consumption and suspected gambling or other illicit activities in a somewhat club-like atmosphere. Of significant note within the appraisal report was the appraiser's inability to find any records regarding the large garage/shop-like structure and the appraiser's concern that the same may have

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

been constructed without proper permits which could expose the owners to liability. Like the other properties at issue, the Defendant has rented the Pigeon Bay Road home and engaged in other activities on the property, to include unilaterally erecting the potentially illegal and additional structure, without consulting Plaintiff or sharing in rents or revenues received. Attempts by Plaintiff and his wife to enter the property to investigate the nature of the activities of concern thereon were blocked by the Defendant and by individuals acting through him, which occurrence ultimately acted as the catalyst for initiating this action in order to protect and preserve the properties gifted to the Plaintiff and the Defendant by their father and to end the disparity of rights between the parties in and to the same. Testimony revealed that current rents for the property were being remitted to the Defendant's son, but no such rents or profits have ever been shared with the Plaintiff and suspected revenues from activities within the garage/shed-like structure have likewise never been shared or accounted for by the Defendant.

3. Plaintiff seeks both an accounting of rents and a partition of the properties by allotment. In actions for partition, allotment is statutorily preferred over judicial sale. Cox v. Frierson, 316 S.C. 469, 451 S.E.2d 392 (1994) (partition by allotment is statutorily preferred over judicial sale of the property). A partition in-kind or by allotment must be capable of being fairly and impartially made without injury to the parties in interest. S.C. Code Ann. 15-61-50.

4. None of the properties are personally occupied by the parties. The North Maple Street property is the childhood homestead of both the Plaintiff and the Defendant, but only the Plaintiff has appeared in this matter and raised (in addition to his monetary arguments) a non-monetary or sentimental attachment as an added basis for allotting full title and avoiding a forced sale. The Defendant has presented no evidence in this case aside from copies of expenditures he produced during discovery that were entered into evidence by the Plaintiff (discussed *infra*). Nor

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

has the Defendant presented argument outside of the general denial of his answer as to why the Plaintiff should not have the relief he seeks. In the absence of argument or the presentment of evidence from the Defendant in this matter, the Court's analysis as to matters or fairness, impartiality and manifest injury are limited to the evidence before me. Consideration of the elements of fairness, impartiality, and injury to the parties in this case therefore rests upon questions of valuation and the balancing of equities.

The appraisals of the properties reflect a fair market value of $25,650.00 or $13,500.00 per acre for the Colleton County property, a fair market value of $140,000.00 for the North Maple Street Property, and a fair market value of $140,000.00 for the Pigeon Bay Property. Based upon the uncontroverted evidence before me as to the size, shape and configuration of the North Maple Street and Pigeon Bay Road properties via testimony of the parties and the information contained within the appraisals, neither are capable of partition in-kind. While in-kind partition of the Colleton County property may be capable given its size and generally unimproved state, the Plaintiff's concession to allow allotment of the property to the Defendant without expectation of remuneration renders the necessity for partition in-kind or by sale moot as to that parcel.[2] Under the circumstances presented before as more fully detailed below, I find and conclude that partition by allotment can be made in a manner that is just as impartial and financially fair to the parties as would otherwise occur between them if partition by sale were directed at the fair market values for which the properties are appraised.[3]

[2] Plaintiff's concession is made in consideration of the relief granted herein of allotment of the Dorchester County properties unto the Plaintiff on such bases as more fully detailed in this Order.

[3] Plaintiff's concession as to the allotment of the Colleton County parcel actually results in a greater return to the Defendant than he would otherwise realize via partition by sale of the properties due to the judgment rendered against him below. In other words, the judgment is being satisfied by way of set off credits to the Plaintiff through the allotment process in lieu of collecting the same through sales proceeds should the properties be sold.

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

It is uncontroverted that Defendant has received rent from at least five tenants per week at the North Maple Street property for a period, at minimum, of not less than ten years in an amount of $150.00 per week per tenant. This rental rate amounts to $39,000.00 per year in rental income, and $390,000.00 over the ten year period that such rents have been collected by the Defendant.[4] In accounting for these rents, the Plaintiff is entitled to judgment declaring that one-half of those rents are due and owing to him in the amount of $195,000.00. Although additional rents are known to have been collected from the other properties by the Defendant, and perhaps other forms of income from the social activities thereon, Plaintiff elects solely to seek accounting of the North Maple Street rents for a period of ten years. To that end, pursuant to Plaintiff's discovery requests to the Defendant, the Defendant produced to Plaintiff's Counsel receipts and other alleged expenses that Defendant claims he incurred for property taxes, repairs, and maintenance from 1998 through 2015, all of which were admitted into evidence by the Plaintiff together with a summary of the same reflecting a total expenditure of $107,305.26 by the Defendant. Defendant produced no other evidence of expenditures. Although Plaintiff questions the legitimacy of many of the Defendant's claimed expenditures, Plaintiff proffers that if the same were legitimate he would have been obligated to contribute half of those expenses in the amount of $53,652.63.[5] As such, judgment as to the share of rents due and owing to Plaintiff must be reduced by his share of expenses such that the sum due from Defendant to the Plaintiff after deduction for expenses is

[4] Plaintiff believes rents have been collected in excess of that period but elects not to pursue additional funds.

[5] Notably, in assessing concepts of fairness, equity, and injury to the parties in ordering partition by allotment, it is the Plaintiff who proffered this evidence and voluntarily assumed legitimacy of the Defendant's expenditures when it was not Plaintiff's duty to do so—especially in light of the Defendant's failures to appear for trial. In doing so, the Plaintiff elected to forgo the opportunity to recover additional property or sums from the Defendant when he was not obligated to do so, and he further made substantial concession to permit the Defendant's receipt of full ownership of the Colleton County property in lieu of laying further claim to Plaintiff's equitable share whether in-kind or by sale. The Plaintiff's elections in this regard are impressively fair and just, and constitute the embodiment of the equitable maxim "[h]e who seeks equity must do equity." See Bank v. Wingard Properties Inc., 394 S.C. 241, 715 S.E.2d 348, 358 (S.C. App. 2011) (Discussing equitable maxims).

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

$141,347.71. I find and conclude that Plaintiff is entitled to entry of judgment on his accounting claim in the amount of $141,347.71. "Compensation to a co-tenant is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another." Ackerman v. Heard, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (Ct. App. 1986).

5. Plaintiff seeks allotment of the North Maple Street property and the Pigeon Bay Road property unto him, and informed the Court at the hearing that if such an allotment were made, Plaintiff would, in fairness and equity, be willing to relinquish title of the Colleton County property to his brother, the Defendant. I find and conclude based upon the uncontroverted evidence presented to me that the fair market value of the North Maple Street property is $140,000.00 and the fair market value of the Pigeon Bay Road property is $140,000.00. An allotment of these properties to the Plaintiff would necessitate Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in North Maple Street, and Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in Pigeon Bay Road, for a total of $140,000.00. However, in consideration of the judgment entered in favor of Plaintiff on his accounting claim, and adjusting such matters between the Plaintiff and Defendant as co-tenants, I find and conclude that the sum that would be due and owing from the Plaintiff to the Defendant arising from such allotment is fully negated by the sum due the Plaintiff from the judgment entered against the Defendant.

I further find and conclude that judgement should be entered in favor of John Murray Gibbs such that the properties located at 205 North Maple Street and 187 Pigeon Bay Road shall be partitioned by allotment unto John Murray Gibbs, and in making such allotment the judgment entered in his favor for $141,347.71 shall be deemed satisfied via application of the same as a set off credit to the sums that would otherwise be due and owing to Henderson Gibbs, Jr. for his

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

interests being severed from the title. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude, mindful of the stated consent of Plaintiff for the exercise of fairness and equity in rendering judgment in this action, that the Colleton County property on Camp Buddy Road shall be partitioned by allotment unto Henderson Gibbs, Jr., with Plaintiff, in consideration of his receipt of the other property interests in Dorchester County described hereinabove, waiving remuneration for the severing of his interests from the title of the Colleton County property. For the reasons set forth herein, I find and conclude that such an allotment between the parties does not work an injustice, and based upon the evidence before me and the equity both sought and volunteered by the Plaintiff, the net result to the Defendant is value in excess of what he would otherwise be entitled via partition in-kind or by sale but for Plaintiff's concessions.

6. Pursuant to Plaintiff's prayer for relief wherein Plaintiff sought such other and further relief as the Court may deem just and equitable, I find and conclude that Plaintiff is entitled to entry of judgment restraining and enjoining Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, from interfering in any way with Plaintiff's possession and control of the properties at 205 Maple Street and 187 Pigeon Bay Road. I further find and conclude that Plaintiff shall be entitled to entry of judgment directing Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, to remove any and all of Defendant's personal property and other personal effects which may be situated or stored on or within the properties at 205 Maple Street and 187 Pigeon Bay Road not less than fourteen (14) days following service of this Order upon the Defendant. Ex parte Dibble, 310

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

S.E.2d 440, 279 S.C. 592 (S.C. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

1. Judgment is entered against the Defendant, Henderson Gibbs, Jr., in the sum of $141,347.71, said sum to be deemed satisfied in the form of set off credits to the Plaintiff, John Murray Gibbs, via the partition by allotment unto him of the properties in Dorchester County as set forth hereinbelow.

2. The real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 is hereby partitioned by allotment unto John Murray Gibbs such that the interests of Henderson Gibbs, Jr., in and to the same shall terminate, and John Murray Gibbs shall, upon entry of this Order, be vested in and hold full title in and to the premises, which property is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

3. The judgment entered hereinabove against Henderson Gibbs, Jr., in the sum of $141,437.71 is hereby satisfied, in full, by way of set off credit to John Murray Gibbs for the full value of Henderson Gibbs, Jr.'s interests in the real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 being allotted unto John Murray Gibbs by this Order, such that any remuneration which may otherwise have been due and owing to Henderson Gibbs, Jr. in the sum of $140,000.00 for the value of his severed interests is thereby set off, in full, by way of said satisfaction of the judgment against him.

4. The real property identified as Colleton County TMS No. 154-00-00-088 shall be partitioned by allotment unto Henderson Gibbs, Jr., such that the interests of John Murray Gibbs, in and to the same shall terminate, and Henderson Gibbs, Jr., shall upon entry of this Order be vested in and hold full title in and to the premises, which property is more fully described as:

ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317. The interests of John Murray Gibbs being allotted unto Henderson Gibbs, Jr. by entry this Order such that Henderson Gibbs, Jr. is the sole title holder of record.

TMS No. 154-00-00-088

5. In consideration of the allotment unto John Murray Gibbs of Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 in the manner so directed herein, and pursuant to his consent as expressed by and through his agent at the final hearing, the allotment of Colleton County TMS No. 154-00-00-088 unto Henderson Gibbs, Jr. is made free from remuneration unto John Murray Gibbs for his severed interests.

6. The satisfaction of the judgment rendered against Henderson Gibbs, Jr. via set off credit to John Murray Gibbs for the allotment to him of Henderson Gibbs, Jr.'s interests in the Dorchester County properties, as well as John Murray Gibbs' voluntary waiver of remuneration otherwise due from Henderson Gibbs, Jr. for the allotment to him of John Murray Gibbs' interests in the Colleton County property, is and shall remain expressly conditioned upon the form and manner of partition as directed by this Order.

7. Henderson Gibbs, Jr, his agents, and any other persons acting through him or on his behalf, or claiming as such, are hereby restrained and enjoined from entering the property except for purposes permitted in Paragraph 8, below, and from harassing, or interfering in any way with John Murray Gibbs' peaceful enjoyment, possession, or control of the real properties

identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina, to include all agents, employees, tenants and any other persons present upon the property with permission of John Murray Gibbs or acting through or on behalf of him.

8. Henderson Gibbs, Jr., his agents, and any other persons acting through him or on his behalf, within fourteen (14) days from the entry and service of this Order upon Henderson Gibbs, Jr., shall remove any and all personal property and other personal effects which may be situated upon or stored on or within the properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina.

9. The undersigned will retain jurisdiction to do all necessary acts incident to this partition action including, but not limited to, the issuance of a Writ of Assistance.

10. This Order shall be recorded in the Dorchester County ROD Office and indexed so as to reflect the divesting of title from Henderson Gibbs, Jr. unto John Murray Gibbs in the property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and more fully described in Paragraph 2 above.

11. This Order shall be recorded in the Colleton County ROD Office and indexed so as to reflect the divesting of title from John Murray Gibbs unto Henderson Gibbs, Jr., in the property identified as Colleton County TMS No. 154-00-00-088 and more fully described in Paragraph 4 above.

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
July 15, 2020

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

HART HYLAND SHEPHERD

Thomas H. Hart, III, P.C.
Gregory L. Hyland
Andrew T. Shepherd

ELECTRONICALLY FILED - 2020 Jul 16 10:24 AM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

July 15, 2020

Colleton County Court of Common Pleas
Attn: Clerk of Court
P.O. Box 620
Walterboro, SC 29488

RE: John Murray Gibbs v Henderson Gibbs, Jr.
Case No.: 2015-CP-15-454

Dear Clerk of Court:

Enclosed for filing, please find the original executed **Final Order (Partition)**, pursuant to the above referenced matter. Also enclosed, please find Plaintiff's **Exhibits 1 though 9**.

Should you have any questions or concerns, please feel free to contact our office at the number listed below.

With kind regards, I am

Respectfully,

Cierra Richards
Paralegal to Andrew T. Shepherd, Esquire

Enclosure(s): Final Order (Partition)
Plaintiff's Exhibits 1 through 8

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-18-707

JOHN MURRAY GIBBS
PLAINTIFF(S)

HENDERSON GIBBS, JR.
DEFENDANT(S)

Submitted by: Andrew T. Shepherd	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
John Murray Gibbs	Henderson Gibbs, Jr.	$N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Murray Gibbs is the sole title holder of record.

TMS No.: 129-16-00-012

-ALSO-

Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

~~Circuit Court Judge~~
Special Referee
Patrick Watts

N/A
Judge Code

July 15 2020
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

7/17/2020

For Clerk of Court Office Use Only

7/17/2020

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Andrew T. Shepherd PO Box 130 Summerville, SC 29484 (via e-filing program)

Henderson Gibbs Jr 939 Old Graniteville Highway Aiken, SC 29801
Jeffrey T. Spell 1721 Ashley River Road Charleston, SC 29407

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

THIS MATTER is before me for partition of real property identified as Colleton County TMS No. 154-00-00-088 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 6, 2015 in the Colleton County Court of Common Pleas in case number 2015-CP-15-454, and for partition of real property identified as Dorchester County TMS No. 129-16-00-012 and Dorchester County TMS No. 130-13-00-050 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 8, 2015 in the Dorchester County Court of Common

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Pleas in case number 2015-CP-18-707. Pursuant to the Consent Order for Reference entered in this matter by the Honorable Perry M. Buckner on March 14, 2016 in the Colleton County Court of Common Pleas, and also by the separate Order for Reference to Special Referee entered in the Dorchester County Court of Common Pleas by the Honorable Diane S. Goodstein, I was appointed to serve as Special Referee to hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment. As the matters before me concern identical issues affecting the rights of the parties' in and to their shared ownership interests in separate parcels of real properties, which issues and shared interests further necessitate balancing the equities between them, the cases were heard together and judgment is hereby entered accordingly.

THE COLLETON COUNTY PROPERTY & CAUSE OF ACTION

The Colleton County property subject to this action, and generally known as Colleton County TMS No. 154-00-00-088, is more fully described as:

> ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317.
>
> TMS No. 154-00-00-088

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Consent Order entered March 14, 2016. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

THE DORCHESTER COUNTY PROPERTY & CAUSE OF ACTION

The Dorchester County Property subject to this action, and generally known as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050, is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Order entered February 18, 2016, which Order reflects that at the hearing thereon, Defendant agreed to the reference and my appointment. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.[1]

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the law pertaining to cases of this subject matter and the credibility of the testimony and evidence before me, I make the following findings of fact and conclusions of law:

1. Plaintiff and Defendant hold title to each Property as tenants in common. All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments. S.C. Code Ann. § 15-61-10 (A). Although the Property at issue would constitute heir's property pursuant to the Clementa Pinckney Uniform Partition of Heir's Property Act ("Act") enacted in 2017, this matter was commenced prior to enactment of the Act and is therefore not subject to the Act's requirements. 2016 Act No. 153, Section 6, provides "[t]his act takes effect on January 1, 2017, and applies to partition actions filed on or after that date." Notwithstanding the inapplicability of the Act's partition procedures, this Court still has jurisdiction to enter judgment for partition whether in kind or by allotment under the remaining provisions of Title 15, Chapter 61, South Carolina Code of Laws. "The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or

[1] The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case and thus indicating he was clearly aware the matter was scheduled.

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." S.C. Code Ann. § 15-61-50. For the reasons more fully explained below, after fully accounting for waste, betterments, and rents among cotenants, and balancing equities between them, I find and conclude under the facts and evidence presented in this case that partition by allotment can be fairly and impartially made as to each Property without injury to any of the parties in interest. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude that the right of first refusal provided for nonpetitioning tenants in common by S.C. Code Ann. 15-61-25(A) was timely and properly noticed by the Plaintiff, and the Defendant did not exercise that right.

2. All three properties are residential in nature and are owned solely by the Plaintiff and Defendant. Appraisal reports by William Ford of Appraisal Services of South Carolina, Inc., were admitted into evidence, without objection, and are uncontroverted for purposes of establishing the fair market value of the respective properties, detailing their condition and characteristics, and supporting the Plaintiff's representations as to the non-viability for partition in-kind. The uncontroverted testimony received by the Court reflects that following the conveyance of the properties to the Plaintiff and Defendant, the Plaintiff generally provided for the upkeep, maintenance, and taxes for the time period spanning 1997 through 2006, at which time Plaintiff moved to the State of New York. Following Plaintiff's move to New York, his visits to South Carolina were severely limited, and his ability to inspect and maintain the properties on a routine basis was hampered. In the years that followed, the Defendant, on his own accord and

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

through the assistance of his son, began to control and generally manage the properties by renting them to third parties—all without consultation or approval of the Plaintiff.

The Colleton County property is located in the Ridgeville, South Carolina, area on Camp Buddy Road and consists of approximately 1.9 acres, with a garage reportedly damaged by fire and another shed. The property is currently unoccupied, but a manufactured home was previously on the property which the Defendant rented to tenants for a number of years. However, the manufactured home was removed from the property and Defendant alleged to the Plaintiff that the same had burned. No rents were ever shared with the Plaintiff. The appraised fair market value of the property as of November 22, 2019, immediately prior to the hearing, is $26,650.00 or $13,500.00 per acre.

The Dorchester County properties are located at 205 North Maple Street and 187 Pigeon Bay Road in the Town of Summerville. The property at 205 North Maple Street is approximately 0.65 acres and consists of an approximately 2,005 square foot brick home, a small detached garage, as well as a manufactured home situated behind the primary house structure. The property at 187 Pigeon Bay Road is approximately 0.25 acres and consists of an approximately 1,083 square feet wood siding house, a shed, and an approximately 1,300 square foot garage/shop-like structure. Both properties are currently occupied by tenants placed by the Defendant or present thereon through the Defendant's son.

The 205 North Maple Street property is the home where both the Plaintiff and Defendant were raised as children. It is the Plaintiff's strong desire to see the home preserved and the property maintained and protected as it has great sentimental value to both him and his family. However, the uncontroverted testimony from the Plaintiff and the witnesses reflects that almost immediately after the Plaintiff moved to New York, the Defendant unilaterally and without Plaintiff's

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

permission converted the interior of the North Maple Street property so as to create a boarding house for roomers. Testimony of the witnesses and notations from the appraisal reflect that the property's condition is below average and had been allowed to deteriorate in some respects. As of the date of the final hearing, the property had been continuously rented a boarding house for not less than ten years at a weekly rental rate of $150.00 per tenant in the primary home, and $150.00 per tenant in the manufactured home. According to the Plaintiff, at all times for a period of no less than ten years, the property has been continuously occupied by at least five tenants paying weekly rent, and sometimes as many as seven tenants or more. The Defendant and the Defendant's son place these tenants in the property and collect all of the rents. No rents have ever been shared with the Plaintiff, and Plaintiff's attempts to gain routine entry to the property or to take back control at various times over the years have been rebuked by the Defendant and by those acting through him. Even when present upon the property, the Defendant's continuing placement of roomers/tenants and modifications to the condition in the property have rendered Plaintiff unable to use the property as a home or to peaceably enjoy his family's homestead as single family home.

The Pigeon Bay Road property is also occupied by tenants placed in the home by the Defendant or the Defendant's son. It is the uncontroverted testimony that the primary home on the Pigeon Bay Road property is currently rented to a third party who pays $800.00 per month in rent, which payments are believed to be made to the Defendant's son. Defendant has also erected a large detached garage/shop-like structure wherein third parties are known to socially congregate and loiter for what Plaintiff and Plaintiff's witnesses have come to learn is typically alcohol consumption and suspected gambling or other illicit activities in a somewhat club-like atmosphere. Of significant note within the appraisal report was the appraiser's inability to find any records regarding the large garage/shop-like structure and the appraiser's concern that the same may have

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

been constructed without proper permits which could expose the owners to liability. Like the other properties at issue, the Defendant has rented the Pigeon Bay Road home and engaged in other activities on the property, to include unilaterally erecting the potentially illegal and additional structure, without consulting Plaintiff or sharing in rents or revenues received. Attempts by Plaintiff and his wife to enter the property to investigate the nature of the activities of concern thereon were blocked by the Defendant and by individuals acting through him, which occurrence ultimately acted as the catalyst for initiating this action in order to protect and preserve the properties gifted to the Plaintiff and the Defendant by their father and to end the disparity of rights between the parties in and to the same. Testimony revealed that current rents for the property were being remitted to the Defendant's son, but no such rents or profits have ever been shared with the Plaintiff and suspected revenues from activities within the garage/shed-like structure have likewise never been shared or accounted for by the Defendant.

3. Plaintiff seeks both an accounting of rents and a partition of the properties by allotment. In actions for partition, allotment is statutorily preferred over judicial sale. Cox v. Frierson, 316 S.C. 469, 451 S.E.2d 392 (1994) (partition by allotment is statutorily preferred over judicial sale of the property). A partition in-kind or by allotment must be capable of being fairly and impartially made without injury to the parties in interest. S.C. Code Ann. 15-61-50.

4. None of the properties are personally occupied by the parties. The North Maple Street property is the childhood homestead of both the Plaintiff and the Defendant, but only the Plaintiff has appeared in this matter and raised (in addition to his monetary arguments) a non-monetary or sentimental attachment as an added basis for allotting full title and avoiding a forced sale. The Defendant has presented no evidence in this case aside from copies of expenditures he produced during discovery that were entered into evidence by the Plaintiff (discussed *infra*). Nor

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

has the Defendant presented argument outside of the general denial of his answer as to why the Plaintiff should not have the relief he seeks. In the absence of argument or the presentment of evidence from the Defendant in this matter, the Court's analysis as to matters or fairness, impartiality and manifest injury are limited to the evidence before me. Consideration of the elements of fairness, impartiality, and injury to the parties in this case therefore rests upon questions of valuation and the balancing of equities.

The appraisals of the properties reflect a fair market value of $25,650.00 or $13,500.00 per acre for the Colleton County property, a fair market value of $140,000.00 for the North Maple Street Property, and a fair market value of $140,000.00 for the Pigeon Bay Property. Based upon the uncontroverted evidence before me as to the size, shape and configuration of the North Maple Street and Pigeon Bay Road properties via testimony of the parties and the information contained within the appraisals, neither are capable of partition in-kind. While in-kind partition of the Colleton County property may be capable given its size and generally unimproved state, the Plaintiff's concession to allow allotment of the property to the Defendant without expectation of remuneration renders the necessity for partition in-kind or by sale moot as to that parcel.[2] Under the circumstances presented before as more fully detailed below, I find and conclude that partition by allotment can be made in a manner that is just as impartial and financially fair to the parties as would otherwise occur between them if partition by sale were directed at the fair market values for which the properties are appraised.[3]

[2] Plaintiff's concession is made in consideration of the relief granted herein of allotment of the Dorchester County properties unto the Plaintiff on such bases as more fully detailed in this Order.

[3] Plaintiff's concession as to the allotment of the Colleton County parcel actually results in a greater return to the Defendant than he would otherwise realize via partition by sale of the properties due to the judgment rendered against him below. In other words, the judgment is being satisfied by way of set off credits to the Plaintiff through the allotment process in lieu of collecting the same through sales proceeds should the properties be sold.

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

It is uncontroverted that Defendant has received rent from at least five tenants per week at the North Maple Street property for a period, at minimum, of not less than ten years in an amount of $150.00 per week per tenant. This rental rate amounts to $39,000.00 per year in rental income, and $390,000.00 over the ten year period that such rents have been collected by the Defendant.[4] In accounting for these rents, the Plaintiff is entitled to judgment declaring that one-half of those rents are due and owing to him in the amount of $195,000.00. Although additional rents are known to have been collected from the other properties by the Defendant, and perhaps other forms of income from the social activities thereon, Plaintiff elects solely to seek accounting of the North Maple Street rents for a period of ten years. To that end, pursuant to Plaintiff's discovery requests to the Defendant, the Defendant produced to Plaintiff's Counsel receipts and other alleged expenses that Defendant claims he incurred for property taxes, repairs, and maintenance from 1998 through 2015, all of which were admitted into evidence by the Plaintiff together with a summary of the same reflecting a total expenditure of $107,305.26 by the Defendant. Defendant produced no other evidence of expenditures. Although Plaintiff questions the legitimacy of many of the Defendant's claimed expenditures, Plaintiff proffers that if the same were legitimate he would have been obligated to contribute half of those expenses in the amount of $53,652.63.[5] As such, judgment as to the share of rents due and owing to Plaintiff must be reduced by his share of expenses such that the sum due from Defendant to the Plaintiff after deduction for expenses is

[4] Plaintiff believes rents have been collected in excess of that period but elects not to pursue additional funds.

[5] Notably, in assessing concepts of fairness, equity, and injury to the parties in ordering partition by allotment, it is the Plaintiff who proffered this evidence and voluntarily assumed legitimacy of the Defendant's expenditures when it was not Plaintiff's duty to do so—especially in light of the Defendant's failures to appear for trial. In doing so, the Plaintiff elected to forgo the opportunity to recover additional property or sums from the Defendant when he was not obligated to do so, and he further made substantial concession to permit the Defendant's receipt of full ownership of the Colleton County property in lieu of laying further claim to Plaintiff's equitable share whether in-kind or by sale. The Plaintiff's elections in this regard are impressively fair and just, and constitute the embodiment of the equitable maxim "[h]e who seeks equity must do equity." See Bank v. Wingard Properties Inc., 394 S.C. 241, 715 S.E.2d 348, 358 (S.C. App. 2011) (Discussing equitable maxims).

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

$141,347.71. I find and conclude that Plaintiff is entitled to entry of judgment on his accounting claim in the amount of $141,347.71. "Compensation to a co-tenant is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another." Ackerman v. Heard, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (Ct. App. 1986).

5. Plaintiff seeks allotment of the North Maple Street property and the Pigeon Bay Road property unto him, and informed the Court at the hearing that if such an allotment were made, Plaintiff would, in fairness and equity, be willing to relinquish title of the Colleton County property to his brother, the Defendant. I find and conclude based upon the uncontroverted evidence presented to me that the fair market value of the North Maple Street property is $140,000.00 and the fair market value of the Pigeon Bay Road property is $140,000.00. An allotment of these properties to the Plaintiff would necessitate Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in North Maple Street, and Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in Pigeon Bay Road, for a total of $140,000.00. However, in consideration of the judgment entered in favor of Plaintiff on his accounting claim, and adjusting such matters between the Plaintiff and Defendant as co-tenants, I find and conclude that the sum that would be due and owing from the Plaintiff to the Defendant arising from such allotment is fully negated by the sum due the Plaintiff from the judgment entered against the Defendant.

I further find and conclude that judgement should be entered in favor of John Murray Gibbs such that the properties located at 205 North Maple Street and 187 Pigeon Bay Road shall be partitioned by allotment unto John Murray Gibbs, and in making such allotment the judgment entered in his favor for $141,347.71 shall be deemed satisfied via application of the same as a set off credit to the sums that would otherwise be due and owing to Henderson Gibbs, Jr. for his

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

interests being severed from the title. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude, mindful of the stated consent of Plaintiff for the exercise of fairness and equity in rendering judgment in this action, that the Colleton County property on Camp Buddy Road shall be partitioned by allotment unto Henderson Gibbs, Jr., with Plaintiff, in consideration of his receipt of the other property interests in Dorchester County described hereinabove, waiving remuneration for the severing of his interests from the title of the Colleton County property. For the reasons set forth herein, I find and conclude that such an allotment between the parties does not work an injustice, and based upon the evidence before me and the equity both sought and volunteered by the Plaintiff, the net result to the Defendant is value in excess of what he would otherwise be entitled via partition in-kind or by sale but for Plaintiff's concessions.

6. Pursuant to Plaintiff's prayer for relief wherein Plaintiff sought such other and further relief as the Court may deem just and equitable, I find and conclude that Plaintiff is entitled to entry of judgment restraining and enjoining Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, from interfering in any way with Plaintiff's possession and control of the properties at 205 Maple Street and 187 Pigeon Bay Road. I further find and conclude that Plaintiff shall be entitled to entry of judgment directing Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, to remove any and all of Defendant's personal property and other personal effects which may be situated or stored on or within the properties at 205 Maple Street and 187 Pigeon Bay Road not less than fourteen (14) days following service of this Order upon the Defendant. Ex parte Dibble, 310

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

S.E.2d 440, 279 S.C. 592 (S.C. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

1. Judgment is entered against the Defendant, Henderson Gibbs, Jr., in the sum of $141,347.71, said sum to be deemed satisfied in the form of set off credits to the Plaintiff, John Murray Gibbs, via the partition by allotment unto him of the properties in Dorchester County as set forth hereinbelow.

2. The real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 is hereby partitioned by allotment unto John Murray Gibbs such that the interests of Henderson Gibbs, Jr., in and to the same shall terminate, and John Murray Gibbs shall, upon entry of this Order, be vested in and hold full title in and to the premises, which property is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

3. The judgment entered hereinabove against Henderson Gibbs, Jr., in the sum of $141,437.71 is hereby satisfied, in full, by way of set off credit to John Murray Gibbs for the full value of Henderson Gibbs, Jr.'s interests in the real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 being allotted unto John Murray Gibbs by this Order, such that any remuneration which may otherwise have been due and owing to Henderson Gibbs, Jr. in the sum of $140,000.00 for the value of his severed interests is thereby set off, in full, by way of said satisfaction of the judgment against him.

4. The real property identified as Colleton County TMS No. 154-00-00-088 shall be partitioned by allotment unto Henderson Gibbs, Jr., such that the interests of John Murray Gibbs, in and to the same shall terminate, and Henderson Gibbs, Jr., shall upon entry of this Order be vested in and hold full title in and to the premises, which property is more fully described as:

ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317. The interests of John Murray Gibbs being allotted unto Henderson Gibbs, Jr. by entry this Order such that Henderson Gibbs, Jr. is the sole title holder of record.

TMS No. 154-00-00-088

5. In consideration of the allotment unto John Murray Gibbs of Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 in the manner so directed herein, and pursuant to his consent as expressed by and through his agent at the final hearing, the allotment of Colleton County TMS No. 154-00-00-088 unto Henderson Gibbs, Jr. is made free from remuneration unto John Murray Gibbs for his severed interests.

6. The satisfaction of the judgment rendered against Henderson Gibbs, Jr. via set off credit to John Murray Gibbs for the allotment to him of Henderson Gibbs, Jr.'s interests in the Dorchester County properties, as well as John Murray Gibbs' voluntary waiver of remuneration otherwise due from Henderson Gibbs, Jr. for the allotment to him of John Murray Gibbs' interests in the Colleton County property, is and shall remain expressly conditioned upon the form and manner of partition as directed by this Order.

7. Henderson Gibbs, Jr, his agents, and any other persons acting through him or on his behalf, or claiming as such, are hereby restrained and enjoined from entering the property except for purposes permitted in Paragraph 8, below, and from harassing, or interfering in any way with John Murray Gibbs' peaceful enjoyment, possession, or control of the real properties

identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina, to include all agents, employees, tenants and any other persons present upon the property with permission of John Murray Gibbs or acting through or on behalf of him.

8. Henderson Gibbs, Jr., his agents, and any other persons acting through him or on his behalf, within fourteen (14) days from the entry and service of this Order upon Henderson Gibbs, Jr., shall remove any and all personal property and other personal effects which may be situated upon or stored on or within the properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina.

9. The undersigned will retain jurisdiction to do all necessary acts incident to this partition action including, but not limited to, the issuance of a Writ of Assistance.

10. This Order shall be recorded in the Dorchester County ROD Office and indexed so as to reflect the divesting of title from Henderson Gibbs, Jr. unto John Murray Gibbs in the property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and more fully described in Paragraph 2 above.

11. This Order shall be recorded in the Colleton County ROD Office and indexed so as to reflect the divesting of title from John Murray Gibbs unto Henderson Gibbs, Jr., in the property identified as Colleton County TMS No. 154-00-00-088 and more fully described in Paragraph 4 above.

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
July 15, 2020

ELECTRONICALLY FILED - 2020 Jul 17 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**ORDER**

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**ORDER**

THIS MATTER came before me for hearing on the Defendant's Motion to Set Aside Judgment filed July 24, 2020. A hearing was held on August 27, 2020, via Microsoft Teams online conferencing software wherein John T. Kornegay, Esquire, appeared on behalf of Defendant, and Andrew T. Shepherd, Esquire, appeared on behalf of the Plaintiff. The hearing was both conducted and concluded without notice by the participants or the Court of any audio or visual defects.

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Having considered the arguments of Counsel, the Motion, the record of this case, together with applicable law, I find and conclude that the Motion must be denied.

Plaintiff initiated these actions for partition of three parcels of real property situate in Colleton and Dorchester Counties in April of 2015. I was appointed Special Referee by Orders of Reference entered in both the Colleton and Dorchester County Court of Common Pleas hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.

The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case. Defendant further contacted the office of the undersigned Special Referee inquiring as to what transpired at the hearing, at which time he was instructed to seek counsel. Throughout the proceedings Defendant was *pro se*.

On December 19, 2019, the Court received Notice of Electronic Filing of a Notice of Appearance by attorney Jeffrey T. Spell on behalf of Defendant. No further motions, notices, or other filings were made in the case until July 17, 2020, when the Final Order was entered by the Clerk of Court following this Court's careful consideration and thorough review of the evidence before it. On July 24, 2020, Defendant's Motion to Set Aside Judgment was filed and served, together with the Notice of Appearance of attorney John T. Kornegay as additional Counsel for the Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Defendant moves the Court to set aside the judgment in this case pursuant to Rule 59 and Rule 60(b), SCRCP, on the basis Defendant's wife had emergency open heart surgery on December 3, 2019, and as a result of the surgery Defendant was unable to travel to and attend the hearing on December 4, 2019. In support of his Motion, Defendant filed as an exhibit thereto a letter dated July 22, 2020 on the stationery of University Hospital Department of Cardiothoracic Surgery of Augusta bearing the names of Renee Frits, P.A.C. and Mark Suzuki, MD, FACS. The letter states that Defendant was unable to be in court on December 4, 2019 to care for his spouse, and further states Defendant's spouse had open heart surgery on December 3, 2019 and was still under the care of Dr. Mark Suzuki, and unable to travel distances and required assistance with all activities of daily living. Defendant also filed an Affidavit in support of his Motion stating he was not able to attend trial the day of the hearing because his wife was in the hospital and required

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Defendant's attention and care. Defendant's Motion alleges that but for the emergency, Defendant would have testified and presented evidence contradicting the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. The Court is sensitive to the medical events that affected the Decedent's spouse on December 3, 2019. However, for the reasons more fully stated below, the Court is not inclined to open its judgement, make amendments, direct entry of a new judgment, or relieve the Defendant from the judgment entered July 17, 2020.

2. "[l]n non-jury actions a new trial may be granted for any of the reasons for which rehearings have heretofore been granted in the courts of [this] state." *Blejski v. Blejski*, 325 S.C. 491,480 S.E.2d 462,466 n.4 (Ct. App. 1997); Rule 59(a)(2), SCRCP. Moreover, "[o]n a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a)(2), SCRCP. The "decision to grant a new trial is left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal." *McAlhaney v. McEleveen*, 413 S.C. 299, 303, 775 S.E.2d 411, 413 (Ct. App. 2015), *reh'g denied* (Aug. 20, 2015). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party cannot use a motion to reconsider to present an issue

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

he could have raised prior to judgment but did not." *Anderson Memorial Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (*citing C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E. 2d 268 (1993)); *See also Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

In the matter before me, Defendant did not appear on December 4, 2019, for the final day of the trial in this case to testify and present evidence which he claims contradicts the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. Defendant alleges his absence on December 4, 2019, was due to his wife's surgery which was performed the day prior to the hearing and his need to be present the following day to assist her in recovery. However, in considering the basis of Defendant's explanation for his absence on December 4, 2019, and whether the same warrants opening the judgment or granting new trial, the Court cannot escape consideration of the Defendant's unexplained absence on April 22, 2019—which is when the final hearing actually convened—as well as certain additional matters that weigh heavily on the Court's assessment of the Defendant's argument and credibility.

As detailed in the Procedural History above, the final hearing could not be fully completed on the date for which it was properly noticed and on which it actually convened on April 22, 2019, due to the Plaintiff's inability to receive reasonable access to the properties for purposes of appraisal. Notably, the properties at that time were under the control and occupation of the Defendant or those acting for him, and it was necessary for the Court to intervene such that the Plaintiff could obtain the appraisals necessary to permit this Court to properly render a decision. Additionally, the Defendant was aware of the December 4, 2019 hearing, and while his wife's surgery and condition would have been a basis reasonably considered by the Court in permitting a continuance had one been requested, the Defendant did not notify the Court at any time.

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

While the Defendant called the Court and left a voicemail after the hearing had started on December 4, 2019, and further contacted the Court immediately following the hearing to find out what transpired, the Defendant made no mention or provided any correspondence regarding the alleged adverse or emergency conditions that precluded his presence. The Defendant states that the medical event on December 3, 2019, was an emergency, and while there is no doubt it was indeed a serious and severe matter, the physician's letter filed in support of Defendant's Motion does not describe the matter as an emergency or provide any information as to what may have precluded Defendant or someone on his behalf from contacting the Court via phone or through some other means the day preceding the hearing when the surgery took place, or prior to the hearing on the morning of December 4, 2019—much less why Defendant was unable to or did not inform the Court of such an alleged emergency immediately following the final date of the hearing. Given Defendant's unexplained absence from the first date of the final hearing, the delay in the proceedings for reasons reasonably attributable to him or to persons acting for him, and the dilatory nature of noting any form of emergency situation, the Court is not convinced that sufficient basis exists to alter, amend, or enter a new judgment, or that Defendant lacked reasonable opportunity to present his case or evidence.

The undersigned's own record of these cases includes a memorandum of Defendant's December 4, 2019, voicemail message. He missed the "mediation" and could be there in an hour if he could reschedule. He said nothing about his wife's surgery. A copy of that memorandum is submitted with this Order as Court Exhibit 1. The undersigned's record of these cases also includes a memorandum of a telephone conference with Attorney Jeffrey T. Spell on December 11, 2019. Defendant had contacted him. The undersigned directed him to contact Attorney Shepherd. Attorney Spell said nothing about any surgery. A copy of the memorandum of that telephone

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

conversation is submitted with this Order as Court Exhibit 2. Apparently, as of December 4 and December 11, Defendant's wife's surgery was not an issue that concerned him relative to the December 4 hearing.

2. Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). A court may relieve a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), SCRCP. In determining whether a judgment should be set aside under Rule 60(b)(1), "[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant." *N.H. Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct.App.1993) (*quoting Harry M. Lightsey & James F. Flanagan*, South Carolina Civil Procedure 82 (1985)).

Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *In re Vora,* 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). For the reasons stated above, and in reiteration of the same, given: (1) the Defendant's unexplained absence from the first date of the final hearing whereat he could have presented evidence and for which he had adequate notice, adequate opportunity to appear, the right to introduce evidence, and to confront the Plaintiff; (2) the delay in completing the proceedings for reasons reasonably attributable to him or to persons acting for him; and (3) the dilatory nature of noting any form of emergency situation—together with the lack of evidence as to why a continuance could not otherwise be requested or simple notice given to the Court prior to the final date of hearing or immediately thereafter—the Court is not convinced that sufficient or credible basis exists to set aside the judgment for excusable neglect, or that Defendant did not have adequate opportunity to be present and heard, or to otherwise avail himself of such opportunity had he acted with diligence.

For the foregoing reasons, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Set Aside Judgment is **DENIED.**

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
October 3, 2020

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

12/4/19

PC| Mr. Gibbs

843-343-3954

* he ~~would~~ missed medicine.
* he can ~~be~~ be here in an hour if he can reschedule.

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

PENGAD 800-631-6989
EXHIBIT
1

12/11/1

PH Jeff Spell

843-452-3553

He contacted by Henderson Rubber He to contact Andy Shepherd for copy of proposed order

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

EXHIBIT 2
PENGAD 800-631-6989

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**ORDER**

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**ORDER**

THIS MATTER came before me for hearing on the Defendant's Motion to Set Aside Judgment filed July 24, 2020. A hearing was held on August 27, 2020, via Microsoft Teams online conferencing software wherein John T. Kornegay, Esquire, appeared on behalf of Defendant, and Andrew T. Shepherd, Esquire, appeared on behalf of the Plaintiff. The hearing was both conducted and concluded without notice by the participants or the Court of any audio or visual defects.

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Having considered the arguments of Counsel, the Motion, the record of this case, together with applicable law, I find and conclude that the Motion must be denied.

Plaintiff initiated these actions for partition of three parcels of real property situate in Colleton and Dorchester Counties in April of 2015. I was appointed Special Referee by Orders of Reference entered in both the Colleton and Dorchester County Court of Common Pleas hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.

The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case. Defendant further contacted the office of the undersigned Special Referee inquiring as to what transpired at the hearing, at which time he was instructed to seek counsel. Throughout the proceedings Defendant was *pro se*.

On December 19, 2019, the Court received Notice of Electronic Filing of a Notice of Appearance by attorney Jeffrey T. Spell on behalf of Defendant. No further motions, notices, or other filings were made in the case until July 17, 2020, when the Final Order was entered by the Clerk of Court following this Court's careful consideration and thorough review of the evidence before it. On July 24, 2020, Defendant's Motion to Set Aside Judgment was filed and served, together with the Notice of Appearance of attorney John T. Kornegay as additional Counsel for the Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Defendant moves the Court to set aside the judgment in this case pursuant to Rule 59 and Rule 60(b), SCRCP, on the basis Defendant's wife had emergency open heart surgery on December 3, 2019, and as a result of the surgery Defendant was unable to travel to and attend the hearing on December 4, 2019. In support of his Motion, Defendant filed as an exhibit thereto a letter dated July 22, 2020 on the stationery of University Hospital Department of Cardiothoracic Surgery of Augusta bearing the names of Renee Frits, P.A.C. and Mark Suzuki, MD, FACS. The letter states that Defendant was unable to be in court on December 4, 2019 to care for his spouse, and further states Defendant's spouse had open heart surgery on December 3, 2019 and was still under the care of Dr. Mark Suzuki, and unable to travel distances and required assistance with all activities of daily living. Defendant also filed an Affidavit in support of his Motion stating he was not able to attend trial the day of the hearing because his wife was in the hospital and required

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Defendant's attention and care. Defendant's Motion alleges that but for the emergency, Defendant would have testified and presented evidence contradicting the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. The Court is sensitive to the medical events that affected the Decedent's spouse on December 3, 2019. However, for the reasons more fully stated below, the Court is not inclined to open its judgement, make amendments, direct entry of a new judgment, or relieve the Defendant from the judgment entered July 17, 2020.

2. "[I]n non-jury actions a new trial may be granted for any of the reasons for which rehearings have heretofore been granted in the courts of [this] state." *Blejski v. Blejski*, 325 S.C. 491,480 S.E.2d 462,466 n.4 (Ct. App. 1997); Rule 59(a)(2), SCRCP. Moreover, "[o]n a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a)(2), SCRCP. The "decision to grant a new trial is left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal." *McAlhaney v. McEleveen*, 413 S.C. 299, 303, 775 S.E.2d 411, 413 (Ct. App. 2015), *reh'g denied* (Aug. 20, 2015). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party cannot use a motion to reconsider to present an issue

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

he could have raised prior to judgment but did not." *Anderson Memorial Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (*citing C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E. 2d 268 (1993)); *See also Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

In the matter before me, Defendant did not appear on December 4, 2019, for the final day of the trial in this case to testify and present evidence which he claims contradicts the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. Defendant alleges his absence on December 4, 2019, was due to his wife's surgery which was performed the day prior to the hearing and his need to be present the following day to assist her in recovery. However, in considering the basis of Defendant's explanation for his absence on December 4, 2019, and whether the same warrants opening the judgment or granting new trial, the Court cannot escape consideration of the Defendant's unexplained absence on April 22, 2019—which is when the final hearing actually convened—as well as certain additional matters that weigh heavily on the Court's assessment of the Defendant's argument and credibility.

As detailed in the Procedural History above, the final hearing could not be fully completed on the date for which it was properly noticed and on which it actually convened on April 22, 2019, due to the Plaintiff's inability to receive reasonable access to the properties for purposes of appraisal. Notably, the properties at that time were under the control and occupation of the Defendant or those acting for him, and it was necessary for the Court to intervene such that the Plaintiff could obtain the appraisals necessary to permit this Court to properly render a decision. Additionally, the Defendant was aware of the December 4, 2019 hearing, and while his wife's surgery and condition would have been a basis reasonably considered by the Court in permitting a continuance had one been requested, the Defendant did not notify the Court at any time.

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

While the Defendant called the Court and left a voicemail after the hearing had started on December 4, 2019, and further contacted the Court immediately following the hearing to find out what transpired, the Defendant made no mention or provided any correspondence regarding the alleged adverse or emergency conditions that precluded his presence. The Defendant states that the medical event on December 3, 2019, was an emergency, and while there is no doubt it was indeed a serious and severe matter, the physician's letter filed in support of Defendant's Motion does not describe the matter as an emergency or provide any information as to what may have precluded Defendant or someone on his behalf from contacting the Court via phone or through some other means the day preceding the hearing when the surgery took place, or prior to the hearing on the morning of December 4, 2019—much less why Defendant was unable to or did not inform the Court of such an alleged emergency immediately following the final date of the hearing. Given Defendant's unexplained absence from the first date of the final hearing, the delay in the proceedings for reasons reasonably attributable to him or to persons acting for him, and the dilatory nature of noting any form of emergency situation, the Court is not convinced that sufficient basis exists to alter, amend, or enter a new judgment, or that Defendant lacked reasonable opportunity to present his case or evidence.

The undersigned's own record of these cases includes a memorandum of Defendant's December 4, 2019, voicemail message. He missed the "mediation" and could be there in an hour if he could reschedule. He said nothing about his wife's surgery. A copy of that memorandum is submitted with this Order as Court Exhibit 1. The undersigned's record of these cases also includes a memorandum of a telephone conference with Attorney Jeffrey T. Spell on December 11, 2019. Defendant had contacted him. The undersigned directed him to contact Attorney Shepherd. Attorney Spell said nothing about any surgery. A copy of the memorandum of that telephone

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

conversation is submitted with this Order as Court Exhibit 2. Apparently, as of December 4 and December 11, Defendant's wife's surgery was not an issue that concerned him relative to the December 4 hearing.

2. Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). A court may relieve a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), SCRCP. In determining whether a judgment should be set aside under Rule 60(b)(1), "[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant." *N.H. Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct.App.1993) (*quoting Harry M. Lightsey & James F. Flanagan*, South Carolina Civil Procedure 82 (1985)).

Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *In re Vora,* 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). For the reasons stated above, and in reiteration of the same, given: (1) the Defendant's unexplained absence from the first date of the final hearing whereat he could have presented evidence and for which he had adequate notice, adequate opportunity to appear, the right to introduce evidence, and to confront the Plaintiff; (2) the delay in completing the proceedings for reasons reasonably attributable to him or to persons acting for him; and (3) the dilatory nature of noting any form of emergency situation—together with the lack of evidence as to why a continuance could not otherwise be requested or simple notice given to the Court prior to the final date of hearing or immediately thereafter—the Court is not convinced that sufficient or credible basis exists to set aside the judgment for excusable neglect, or that Defendant did not have adequate opportunity to be present and heard, or to otherwise avail himself of such opportunity had he acted with diligence.

For the foregoing reasons, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Set Aside Judgment is **DENIED.**

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
October 3, 2020

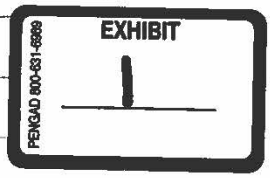
ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

12/4/19

PC| Mr. Gibbs

843-343-3954

* he would missed medicine.
* he can be here in an hour if he can reschedule.



ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

12/11/19

PH Jeff Spell

843-452-3553

he contacted by Henderson Hubbs

He to contact Andy Shepherd for copy of proposed order

ELECTRONICALLY FILED - 2020 Oct 08 2:03 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	
	CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS,	
Plaintiff,	
vs.	SUMMONS
HENDERSON GIBBS, JR.,	(Non-Jury, Partition)
Defendant.	

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the undersigned subscriber, Andrew T. Shepherd, Esquire, P.O. Box 130, Summerville, South Carolina, 29484, within thirty (30) days, after the service hereof, exclusive of the date of such service; and if you fail to file an Answer or appear to defend the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default to be rendered against you for the relief demanded in the Complaint.

Hart Hyland Shepherd, LLC

Andrew T. Shepherd, Esquire
207 East 1st North Street (zip 29483)
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 *firm*
(843) 302-8329 *fax*
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

2015 APR -6 AM 11:19

Summerville, South Carolina
April 1, 2015.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	
	CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS,	
Plaintiff,	
vs.	COMPLAINT
HENDERSON GIBBS, JR.,	(Non-Jury, Partition)
Defendant.	

2015 APR -6 AM 11:19

COLLETON COUNTY

COMES NOW Plaintiff, complaining of the Defendant, who would show as follows:

1. Plaintiff brings this action pursuant to Section 15-61-50, et seq., Code of Laws of South Carolina (1976), as amended, for the purposes of seeking a partition of the property held jointly between Plaintiff and Defendant as tenants in common.

2. John Murray Gibbs ("Plaintiff") is a resident of Elmont, New York, maintains a part-time residence in Summerville, South Carolina, and has a claim in the property subject to this action.

3. Defendant, Henderson Gibbs, Jr., is a resident of Dorchester County, South Carolina, and has a claim in the property subject to this action.

4. The property that is the subject matter of this suit is situated in Colleton County, South Carolina, and for purposes of this suit is described as follows:

> ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the

East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317.

TMS No.:154-00-00-088

5. Plaintiff alleges, on information and belief, that he is the owner of an undivided fifty percent (50%) interest as a tenant-in-common with the Defendant, in and to fee simple, marketable title to the real property described in Paragraph 4 above.

6. Plaintiff avers that Defendant refuses to allow Plaintiff any access to the property, and that Defendant or members of his immediate family have utilized or currently utilize the same as their personal residences rent free, or otherwise rent the property to third-parties and conduct for-profit business activities thereon, all without the permission of, to the exclusion of, and without accounting or making payment to the Plaintiff for his equitable share of any such income activities.

7. Plaintiff contends that because of the size of the property and the nature of the improvements thereon, the property cannot be divided in kind without injury to the parties' interests, and as such should be sold or allotted as may be equitable, and not divided in kind.

8. That the parties, pursuant to statute, have a right of first refusal prior to any court ordered sale or allotment, and should one party desire to purchase the interests of the other he must notify the Court no later than ten days prior to the date set for the trial of the case whereupon the procedures set out in provisions of South Carolina Code §15-61-25 (B), (C), (D), and (E) as amended, shall be followed.

9. Plaintiff desires to partition the property described in Paragraph 4 above and that the same should be sold on the open real estate market by a disinterested third party referee with an equal division of net sales proceeds between the parties, by the judicial sale of the property or by allotment of the same as may be deemed most equitable by the Court.

10. For purposes of initiating and consummating any sale or allotment, and in order to market, appraise, and protect the property, Plaintiff or a disinterested third party referee should be granted authority to oust Defendant and any and all other persons from the property, or obtain an order enjoining Defendant and any and all other persons from otherwise interfering with the Plaintiff's right of entry or that of a third party referee as may be appointed by the Court, and further enjoining any interference with activities attendant to a partition sale of the property.

11. Plaintiff has incurred attorney's fees and costs necessitated by this action, and Plaintiff seeks to have judgment against the Defendant reimbursing him for such attorney's fees and costs, in amounts to be determined by the trier of fact.

12. Plaintiff is further entitled to an accounting from the Defendant of all rents and profits arising from the Defendant's exclusive control of and conduction of for-profit activities upon the property, which sums the Defendant has denied the Plaintiff, and Plaintiff is entitled to judicial settlement of the same with judgment against the Defendant for sums due the Plaintiff in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiff prays for an Order of this Court:

A. Directing the sale of the property by placing the same with a referee under directive to market the property and sell the same at the highest price as may be obtained on the private market following reasonable exposure and arms length negotiations between the referee and a willing buyer, with division of the net proceeds between the

parties, or otherwise placing the property with the Plaintiff pursuant to the same directive;

B. Allotting the property or committing the same to judicial sale as may be equitable.

C. Directing an accounting by the Defendant of all rents and profits, and entering judgment against the Defendant in favor of the Plaintiff in such amounts as may be determined by the trier of fact;

D. Awarding Plaintiff attorney's fees and costs incurred to partition this property; and

E. Granting such other and further relief as this Court deems just, equitable and proper.

[SIGNATURE OF COUNSEL ON FOLLOWING PAGE]

Hart Hyland Shepherd, LLC

Andrew T. Shepherd, Esquire
207 East 1st North Street (zip 29483)
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 *firm*
(843) 302-8329 *fax*
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

Summerville, South Carolina
April 1, 2015.

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS

John Murray Gibbs,)
Plaintiff(s))

CIVIL ACTION COVERSHEET

vs.

2015-CP -15- 454

Henderson Gibbs, Jr.)
Defendant(s))

Submitted By: Andrew T. Shepherd
Address: P.O. Box 130
Summerville, SC 29484

SC Bar #: 76859
Telephone #: 843-410-0711
Fax #: 843-302-8329
Other:
E-mail: andrew@hartfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☒ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

2015 APR 2 11:1

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 04/__1__/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	
	CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS,	
Plaintiff,	
vs.	LIS PENDENS
	(Non-Jury, Partition)
HENDERSON GIBBS, JR.,	
Defendant.	15-LP-15-235

2015 APR -6 AM 11:

TO THE DEFENDANT ABOVE-NAMED:

NOTICE IS HEREBY GIVEN that an action will be commenced in this Court upon the Complaint of the above-named Plaintiff against the above-named Defendant to partition the parties' interests in the premises described below. At the time of the filing of this notice, the premises affected by the said action are situate in the County of Dorchester, State of South Carolina, and are described as follows:

> ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317.
>
> TMS No.:154-00-00-088

For a complete description of the property, the undersigned craves reference to the deed and plat aforesaid.

Hart Hyland Shepherd, LLC

Andrew T. Shepherd, Esquire
207 East 1st North Street (zip 29483)
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 *firm*
(843) 302-8329 *fax*
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

Summerville, South Carolina
April 1, 2015.

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)
	) CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS,	)
Plaintiff,	)
vs.	) SUMMONS
HENDERSON GIBBS, JR.,	) (Non-Jury, Partition)
Defendant.	)

2015 APR -8 PM 3:07
CLERK OF COURT
DORCHESTER COUNTY

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the undersigned subscriber, Andrew T. Shepherd, Esquire, P.O. Box 130, Summerville, South Carolina, 29484, within thirty (30) days, after the service hereof, exclusive of the date of such service; and if you fail to file an Answer or appear to defend the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default to be rendered against you for the relief demanded in the Complaint.

Hart Hyland Shepherd, LLC

Andrew T. Shepherd, Esquire
207 East 1st North Street (zip 29483)
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 *firm*
(843) 302-8329 *fax*
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

Summerville, South Carolina
April 1, 2015.

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)
	) CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS,	)
Plaintiff,	)
vs.	) COMPLAINT
	) (Non-Jury, Partition)
HENDERSON GIBBS, JR.,	)
Defendant.	)

2015 APR -8 PM 3:07
CLERK OF COURT
DORCHESTER COUNTY

COMES NOW Plaintiff, complaining of the Defendant, who would show as follows:

1. Plaintiff brings this action pursuant to Section 15-61-50, et seq., Code of Laws of South Carolina (1976), as amended, for the purposes of seeking a partition of the properties held jointly between Plaintiff and Defendant as tenants in common.

2. John Murray Gibbs ("Plaintiff") is a resident of Elmont, New York, maintains a part-time residence in Summerville, South Carolina, and has a claim in the properties subject to this action.

3. Defendant, Henderson Gibbs, Jr., is a resident of Dorchester County, South Carolina, and has a claim in the properties subject to this action.

4. The properties that are the subject matter of this suit are situated in Dorchester County, South Carolina, and for purposes of this suit are described as follows:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 2007 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.

TMS No.: 129-16-00-012

-ALSO-

Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

5. Plaintiff alleges, on information and belief, that he is the owner of an undivided fifty percent (50%) interest as a tenant-in-common with the Defendant, in and to fee simple, marketable title to the real properties described in Paragraph 4 above.

6. Plaintiff avers that Defendant refuses to allow Plaintiff any access to the properties, and that Defendant or members of his immediate family have utilized or currently utilize the same as their personal residences rent free, or otherwise rent the properties to third-parties and conduct for-profit business activities thereon, all without the permission of, to the

exclusion of, and without accounting or making payment to the Plaintiff for his equitable share of any such income activities.

7. Plaintiff contends that because of the size of the properties and the nature of the improvements thereon, the properties cannot be divided in kind without injury to the parties' interests, and as such should be sold or allotted as may be equitable, and not divided in kind.

8. That the parties, pursuant to statute, have a right of first refusal prior to any court ordered sale or allotment, and should one party desire to purchase the interests of the other he must notify the Court no later than ten days prior to the date set for the trial of the case whereupon the procedures set out in provisions of South Carolina Code §15-61-25 (B), (C), (D), and (E) as amended, shall be followed.

9. Plaintiff desires to partition the properties described in Paragraph 4 above and that the same should be sold on the open real estate market by a disinterested third party referee with an equal division of net sales proceeds between the parties, by the judicial sale of the properties or by allotment of the same as may be deemed most equitable by the Court.

10. For purposes of initiating and consummating any sale or allotment, and in order to market, appraise, and protect the properties, Plaintiff or a disinterested third party referee should be granted authority to oust Defendant and any and all other persons from the properties, or obtain an order enjoining Defendant and any and all other persons from otherwise interfering with the Plaintiff's right of entry or that of a third party referee as may be appointed by the Court, and further enjoining any interference with activities attendant to a partition sale of the properties.

11. Plaintiff has incurred attorney's fees and costs necessitated by this action, and Plaintiff seeks to have judgment against the Defendant reimbursing him for such attorney's fees and costs, in amounts to be determined by the trier of fact.

12. Plaintiff is further entitled to an accounting from the Defendant of all rents and profits arising from the Defendant's exclusive control of and conduction of for-profit activities upon the properties, which sums the Defendant has denied the Plaintiff, and Plaintiff is entitled to judicial settlement of the same with judgment against the Defendant for sums due the Plaintiff in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiff prays for an Order of this Court:

A. Directing the sale of the properties by placing the same with a referee under directive to market the properties and sell the same at the highest price as may be obtained on the private market following reasonable exposure and arms length negotiations between the referee and a willing buyer, with division of the net proceeds between the parties, or otherwise placing the properties with the Plaintiff pursuant to the same directive;

B. Allotting the properties or committing the same to judicial sale as may be equitable.

C. Directing an accounting by the Defendant of all rents and profits, and entering judgment against the Defendant in favor of the Plaintiff in such amounts as may be determined by the trier of fact;

D. Awarding Plaintiff attorney's fees and costs incurred to partition this property; and

E. Granting such other and further relief as this Court deems just, equitable and proper.

[SIGNATURE OF COUNSEL ON FOLLOWING PAGE]

Hart Hyland Shepherd, LLC

Andrew T. Shepherd, Esquire
207 East 1st North Street (zip 29483)
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 *firm*
(843) 302-8329 *fax*
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

Summerville, South Carolina
April 1, 2015.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

John Murray Gibbs,)
Plaintiff(s))

vs.)

Henderson Gibbs, Jr.)
Defendant(s))

CIVIL ACTION COVERSHEET

2015-CP - 18- 707

2015 APR -8 PM 3:01
CLERK OF COURT
DORCHESTER COUNTY

Submitted By: Andrew T. Shepherd
Address: P.O. Box 130
Summerville, SC 29484

SC Bar #: 76859
Telephone #: 843-410-0711
Fax #: 843-302-8329
Other:
E-mail: andrew@hartfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☒ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 04/___/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)
) CASE No. 2015-CP-18-107

JOHN MURRAY GIBBS,

Plaintiff,

vs.

HENDERSON GIBBS, JR.,

Defendant.

LIS PENDENS

(Non-Jury, Partition)

2015 APR -8 PM 3:07
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANT ABOVE-NAMED:

NOTICE IS HEREBY GIVEN that an action will be commenced in this Court upon the Complaint of the above-named Plaintiff against the above-named Defendant to partition the parties' interests in the premises described below. At the time of the filing of this notice, the premises affected by the said action are situate in the County of Dorchester, State of South Carolina, and are described as follows:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 2007 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses

the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

For a complete description of the property, the undersigned craves reference to the deed and plat aforesaid.

Hart Hyland Shepherd, LLC

Andrew T. Shepherd, Esquire
207 East 1st North Street (zip 29483)
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 *firm*
(843) 302-8329 *fax*
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

Summerville, South Carolina
April 1, 2015.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	
	CASE NO. 2015-CP-15-454
JOHN MURRAY GIBBS	
Plaintiff,	ANSWER
vs.	
HENDERSON GIBBS, JR.,	
Defendant.	

COLLETON COUNTY
COMMON PLEAS
2015 SEP 24 AM 11:22

TO: ANDREW T. SHEPHERD, ESQ., as ATTORNEY FOR THE PLAINTIFF:

Henderson Gibbs, Jr. (Defendant) wishes to respond to the Plaintiff's Complaint filed April 6, 2015 and hereby answers said Petition as follows:

1. Each and every allegation contained in said Complaint that is not hereinafter specifically admitted, explained, or qualified is denied.
2. Defendant admits the allegations contained in Paragraphs 1, 2, 3, and 4 of the Complaint.
3. Defendant denies all other allegations contained in the Complaint and requires strict proof thereof.

WHEREFORE, having fully responded to the Plaintiff's Complaint, the Defendant prays that the Court:

A. Deny all of Plaintiff's prayers for relief; and

B. Declare that the Defendant be awarded such other and further relief as the Court deems just and proper, including attorney's fees, costs for defending this action, and any other remedies available.

Henderson Gibbs Jr.
HENDERSON GIBBS, JR.
DEFENDANT

Summerville, South Carolina
18 day of September, 2015

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
)
JOHN MURRAY GIBBS) CASE NO. 2015-CP-18-707
)
Plaintiff,) ANSWER
)
vs.)
)
HENDERSON GIBBS, JR.,)
)
Defendant.)

2015 SEP 24 AM 11:42
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

TO: ANDREW T. SHEPHERD, ESQ., as ATTORNEY FOR THE PLAINTIFF:

Henderson Gibbs, Jr. (Defendant) wishes to respond to the Plaintiff's Complaint filed April 8, 2015 and hereby answers said Petition as follows:

1. Each and every allegation contained in said Complaint that is not hereinafter specifically admitted, explained, or qualified is denied.
2. Defendant admits the allegations contained in Paragraphs 1, 2, 3, and 4 of the Complaint.
3. Defendant denies all other allegations contained in the Complaint and requires strict proof thereof.

WHEREFORE, having fully responded to the Plaintiff's Complaint, the Defendant prays that the Court:

A. Deny all of Plaintiff's prayers for relief; and

B. Declare that the Defendant be awarded such other and further relief as the Court deems just and proper, including attorney's fees, costs for defending this action, and any other remedies available.

Henderson Gibbs Jr.
HENDERSON GIBBS, JR.
DEFENDANT

Summerville, South Carolina
18 day of September, 2015

RE-RECORDED
2015 DEC 16 AM 11:08
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	NOTICE OF MOTION AND MOTION (Motion for Order of Reference to Special Referee)

TO THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned counsel, will move before the Dorchester County Court of Common Pleas, on the tenth day after service hereof, or as soon thereafter as Counsel may be heard, pursuant to Rule 53, SCRCP, for an Order of Reference appointing a Special Referee.

This is an action for Partition of real property located in Dorchester County, State of South Carolina. Defendant, *pro se*, has Answered the Complaint, generally denying Plaintiff's allegations. Plaintiff moves this Court pursuant to Rule 53, SCRCP, for an Order of Reference appointing Patrick R. Watts, Esquire, a member of the South Carolina Bar, as Special Referee to exercise all power and authority which a Circuit Judge sitting without a jury would have in a similar matter. In support of the within Motion, Plaintiff asserts:

1) That a separate action between the same parties for the partition of other property is also pending in Colleton County, South Carolina, having been filed and served upon the Defendant simultaneously with the within action from Dorchester County, and that reference of both actions to a single Special Referee will maximize judicial efficiency

and resources while maintaining separate and distinct causes of action and preserving appropriate statutory venue.

2) Plaintiff resides out of state and is currently under the close supervision of physicians which restricts his ability to travel upon short notice, the Defendant likewise resides some distance from the location of either tribunal, and reference to a single Special Referee will enable the parties to select a single and convenient date-certain trial of the issues in both matters without further burdening the Courts' rosters or altering venue as to either forum.

3) Counsel has simultaneously served an identical motion in the Colleton County Court of Common Pleas for purposes of effectuating the relief sought herein.

Respectfully Submitted,

Andrew T. Shepherd, Esquire
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 firm
(843) 302-8329 fax
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

CLERK OF COURT
DORCHESTER COUNTY
2015 DEC 16 AM 11:09
E-RECORDED

Summerville, South Carolina
December 9, 2015.

CERTIFICATE OF SERVICE

The undersigned employee of Hart Hyland Shepherd, LLC, Attorney(s) for Plaintiff, hereby certifies that a copy of the within Motion was served on the Defendant by mailing a copy properly addressed with sufficient postage affixed thereto, as follows:

Henderson Gibbs
939 Old Graniteville Hwy
Aiken, SC 29801

Summerville, South Carolina
December 15, 2015

Margaret C. Hiel

$250.00 MB ✓

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
FILED-RECORDED
2015 DEC 16 AM 11:08
JOHN MURRAY GIBBS) **MOTION AND ORDER INFORMATION**
Plaintiff,) **FORM AND COVERSHEET**
vs. CLERK OF COURT DORCHESTER COUNTY
)
HENDERSON GIBBS, JR.)
Defendant.) Docket No. 2015-CP-18-707

Plaintiff's Attorney:	Defendant's Attorney:
Andrew T. Shepherd, Bar No. 76859	None – Pro Se, Bar No. _____
Address:	Address:
PO Box 130, Summerville, SC 29484	_____
Phone: 843-410-0711 Fax 843-302-8329	Phone: _____ Fax _____
E-mail: andrew@hartfirm.com Other: _____	E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Order of Reference to Special Referee
Estimated Time Needed: 15 min Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 12/10/2015
Signature of Attorney for ☒ **Plaintiff** /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator **Act** ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ **Motion** for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached **order**.	JUDGE CODE _____ Date: _____
☐ Other: _____	Judge Signature: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

STATE OF SOUTH CAROLINA COUNTY OF COLLETON JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454 NOTICE OF MOTION AND MOTION (Motion for Order of Reference to Special Referee)

PATRICIA C. SHARPE
COLLETON COUNTY
COMMON PLEAS
2016 JAN 19 AM 11: 13

TO THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned counsel, will move before the Dorchester County Court of Common Pleas, on the tenth day after service hereof, or as soon thereafter as Counsel may be heard, pursuant to Rule 53, SCRCP, for an Order of Reference appointing a Special Referee.

This is an action for Partition of real property located in Colleton County, State of South Carolina. Defendant, *pro se*, has Answered the Complaint, generally denying Plaintiff's allegations. Plaintiff moves this Court pursuant to Rule 53, SCRCP, for an Order of Reference appointing Patrick R. Watts, Esquire, a member of the South Carolina Bar, as Special Referee to exercise all power and authority which a Circuit Judge sitting without a jury would have in a similar matter. In support of the within Motion, Plaintiff asserts:

1) That a separate action between the same parties for the partition of other property is also pending in Dorchester County, South Carolina, having been filed and served upon the Defendant simultaneously with the within action from Colleton County, and that reference of both actions to a single Special Referee will maximize judicial

efficiency and resources while maintaining separate and distinct causes of action and preserving appropriate statutory venue.

2) Plaintiff resides out of state and is currently under the close supervision of physicians which restricts his ability to travel upon short notice, the Defendant likewise resides some distance from the location of either tribunal, and reference to a single Special Referee will enable the parties to select a single and convenient date-certain trial of the issues in both matters without further burdening the Courts' rosters or altering venue as to either forum.

3) Counsel has simultaneously served an identical motion in the Dorchester County Court of Common Pleas for purposes of effectuating the relief sought herein.

Respectfully Submitted,

Andrew T. Shepherd, Esquire
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 firm
(843) 302-8329 fax
S.C. Bar No.: 76859
andrew@hartfirm.com
Attorney(s) for Plaintiff

Summerville, South Carolina
January 11, 2016

FAIRCHILD C. GRAHAM
COLLETON COUNTY
COMMON PLEAS
2016 JAN 19 AM 11:13

CERTIFICATE OF SERVICE

The undersigned employee of Hart Hyland Shepherd, LLC, Attorney(s) for Plaintiff, hereby certifies that a copy of the within Motion was served on the Defendant by mailing a copy properly addressed with sufficient postage affixed thereto, as follows:

Henderson Gibbs
939 Old Graniteville Hwy
Aiken, SC 29801

Summerville, South Carolina
January 14, 2016

Margaret C. Hiel

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	
	CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS,	
Plaintiff,	CONSENT TO APPOINTMENT AS SPECIAL REFEREE
vs.	
HENDERSON GIBBS, JR.,	
Defendant.	

I, Patrick R. Watts, Esquire, a member of the South Carolina Bar, consent to appointment as a Special Referee pursuant to Rule 53, SCRCP, as is more fully set forth in Plaintiff's Motion for Reference, to exercise all power and authority which a Circuit Judge sitting without a jury would have in a similar matter.

Respectfully Submitted,

Patrick R. Watts, Esquire
P.O. Box 2046
Summerville, SC 29484
843-851-7050
pat.watts@wattslawfirmpa.com
SC Bar No.: 5975

Summerville, South Carolina
January 8, 2016.

PATRICIA C. GRAY
COLLETON COUNTY
COMMON PLEAS
2016 JAN 19 AM 11:13

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF COLLETON) FOURTEENTH JUDICIAL CIRCUIT
)
JOHN MURRAY GIBBS)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
HENDERSON GIBBS, JR.)
Defendant.) Docket No. 2015-CP-15-454

Plaintiff's Attorney:	Defendant's Attorney:
Andrew T. Shepherd, Bar No. 76859	none - Pro Se, Bar No. _____
Address:	Address:
PO Box 130, Summerville, SC 29484	_____
Phone: 843-410-0711 Fax 843-302-8329	Phone: _____ Fax _____
E-mail: andrew@hartfirm.com Other: _____	E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Order of Reference to Special Referee
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ **YES/** ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 1/11/2016
Signature of Attorney for ☒ **Plaintiff** / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

2016 JAN 19 AM 11:13
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____ Date: _____
☐ Other: _____	Judge Signature: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

ELECTRONICALLY FILED - 2019 Nov 14 1:51 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**NOTICE OF HEARING** (Partition)

TO: THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that a Final Hearing on the Summons and Complaint for Partition of real property identified as Dorchester County TMS Number 129-16-00-012 and TMS No.: 130-13-00-050, has been scheduled before the appointed Special Referee, Patrick R. Watts, Esquire on the 4th day of December, 2019, at 10:00 a.m., at Watts Law Firm, PA, located at 133 E. 1st North Street, Summerville, South Carolina 29483. Please be present if so minded.

PLEASE FURTHER TAKE NOTICE that pursuant to S.C. Code Ann. § 15-61-25, a copy of which is attached as Exhibit 1 and incorporated herein by reference, all nonpetitioning joint tenants or tenants in common who are interested in purchasing the property must notify the Court/Special Referee of that interest no later than ten days prior to the date set for the trial of the case.

Respectfully,

/s/ Andrew T. Shepherd
Andrew T. Shepherd
Hart Hyland Shepherd, LLC
207 East 1st North Street
P.O. Box 430 (29484)

Summerville, SC 29483
(843) 410-0711
(843) 302-8329 *facsimile*
S.C. Bar. No.: 76859
andrew@hartfirm.com
Attorney for Plaintiff

Dated: November 13, 2019
Summerville, South Carolina

ELECTRONICALLY FILED - 2019 Nov 14 1:51 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

ELECTRONICALLY FILED - 2019 Nov 14 1:51 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Exhibit 1

SECTION 15-61-25. Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure.

(A) For the purposes of this section, "joint tenants and tenants in common" include heirs or devisees. Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The nonpetitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

(B) In the circumstances described in subsection (A) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court. The appraisers appointed pursuant to this section shall make their report in writing to the court within thirty days after their appointment. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost of court to those seeking to purchase the interests of the joint tenants or tenants in common petitioning to sell their interest in the property described in the petition for partition.

(C) In the event that the petitioning joint tenants or tenants in common object to the value of the interests as determined by the appointed appraisers, those joint tenants or tenants in common shall have ten days from the date of filing of the report to file written notice of objection to the report and request a hearing before the court on the value. An evidentiary hearing limited to the proposed valuation of the interests of the petitioning joint tenants or tenants in common shall be conducted, and an order as to the valuation of the interests of the petitioning joint tenants or tenants in common shall be issued.

(D) After the valuation of the interest in property is completed as provided in subsection (B) or (C) of this section, the nonpetitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have forty-five days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the court shall execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers.

(E) In the event that the nonpetitioning joint tenants or tenants in common fail to pay the purchase price as provided in subsection (D) of this section, the court shall proceed according to its traditional practices in partition sales.

HISTORY: 2006 Act No. 302, Section 1, eff May 25, 2006, applicable to all petitions for partition filed after that date.

ELECTRONICALLY FILED - 2019 Nov 14 1:51 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE NO.: 2015-CP-18-707
)	
JOHN MURRAY GIBBS,)	
)	
Plaintiff,)	
)	**CERTIFICATE OF SERVICE**
v.)	
)	
HENDERSON GIBBS, JR.,)	
)	
Defendant.)	
)	

I, Cierra Richards, Paralegal to Andrew T. Shepherd, Esquire, attorney for Plaintiff, John Murray Gibbs, individually do hereby state that on the date below I served the Defendant, Henderson Gibbs, Jr., with a copy of the **Notice of Hearing**, setting the Final Hearing in this matter for **December 4, 2019** at **10:00 a.m. at Watts Law Firm, PA, located at 133 E. 1st North Street, Summerville, South Carolina 29483**, via United States Postal Service, postage pre-paid and addressed as follows:

Henderson Gibbs, Jr.
939 Old Graniteville Hwy
Aiken, SC 29801

Cierra Richards
Paralegal to Andrew T. Shepherd
207 E. 1st North Street (29483)
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 (phone)
(843) 302-8329 (facsimile)

This 13th day of November 2019
Summerville, South Carolina

ELECTRONICALLY FILED - 2020 Jul 24 4:54 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA COUNTY OF COLLETON JOHN MURRAY GIBBS, PLAINTIFF, VS. HENDERSON GIBBS, JR., DEFENDANT.	IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-15-454 **MOTION TO SET ASIDE JUDGMENT**

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER JOHN MURRAY GIBBS, PLAINTIFF, VS. HENDERSON GIBBS, JR., DEFENDANT.	IN THE COMMON PLEAS COURT FIRST JUDICIAL CIRCUIT CASE NO.: 2015-CP-18-707 **MOTION TO SET ASIDE JUDGMENT**

PLEASE TAKE NOTICE that Defendant, Henderson Gibbs, Jr. (hereinafter "Defendant Henderson"), by and through his undersigned attorney will move within 10 days, or as soon thereafter as it may be heard, pursuant to Rule 59, SCRCP, and in the alternative Rule 60(b), SCRCP, for the Court to set aside the judgment in this case.

ELECTRONICALLY FILED - 2020 Jul 24 4:54 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

A final hearing in this matter was scheduled for December 04, 2019. On December 03, 2019 Defendant Henderson's wife, Georgia Gibbs, had emergency open heart surgery at University Hospital in Augusta, Georgia. See Statement of Rene Fritz and Dr. Mark Suzuki from 07/22/2020, a copy of which is attached hereto as Exhibit A. As a result of this medical emergency with his wife, Defendant Henderson was unable to travel to and attend the hearing. See Exhibit B.

Pursuant to the South Carolina Rules of Civil Procedure the Court may "open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a), SCRCP. Because Defendant Henderson was faced with a medical emergency and unable to attend the hearing, the Court should set aside the judgment and reschedule the matter for a hearing.

In the alternative, pursuant to Rule 60(b), SCRCP, "the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1), SCRCP. On the day of the hearing Defendant Henderson was unable to attend because he was attending to his wife who was recovering from open heart surgery at University Hospital in Augusta, Georgia. His inability to attend the hearing was due to excusable negligence and surprise at having a medical emergency. Defendant Henderson attempted to call and request a continuance but was not successful in reaching the Court in time.

But for the emergency, Defendant Henderson would have testified and presented evidence contradicting the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue in this case.

WHEREFORE, Defendant Henderson Gibbs, Jr. requests this Court set aside the judgment in this case and set a new hearing date.

RESPECTFULLY SUBMITTED,

S/JOHN T. KORNEGAY
P. Brandt Shelbourne, Esq. (SC # 15143)
John T. Kornegay, Esq. (SC # 102294
SHELBOURNE LAW
131 East Richardson Ave.
Summerville, SC 29483
843.871.2210 (P)
843.875.2224 (F)
Attorneys for Henderson Gibbs, Jr.

July 24, 2020
Summerville, South Carolina

ELECTRONICALLY FILED - 2020 Jul 24 4:54 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Exhibit A

ELECTRONICALLY FILED - 2020 Jul 24 4:54 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP180707

UNIVERSITY CARDIOTHORACIC SURGERY
Timothy J. Hunter, M.D., FACS
Mark M. Suzuki, M.D., MBA, FACS
Christopher M. Ellington, M.D.

7/22/2020

To whom it may concern,

Mr. Gibbs was unable to be in court on 12/04/2019 to care for his spouse. His spouse had open heart surgery on 12/03/2019 and was still under the care of Dr. Mark Suzuki on 12/04/2019. The patient was unable to travel distances and required assistance with all activities of daily living due to sternal precautions following surgery. If there are any questions or concerns please contact Dr.Suzuki's office at 706-722-8242.

Very Respectfully,

Renee Fritz, P.A.C
Mark Suzuki MD, FACS
University Hospital Department of Cardiothoracic Surgery
1348 Walton Way Ste 5700
Augusta GA. 30901
706-722-8242 (p)

ELECTRONICALLY FILED - 2020 Jul 24 4:54 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Exhibit B

ELECTRONICALLY FILED - 2020 Jul 24 4:54 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP180707

ELECTRONICALLY FILED - 2020 Jul 24 4:54 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CASE NO.: 2015-CP-15-454
	)	
JOHN MURRAY GIBBS,	)	
	)	
PLAINTIFF,	)	
	)	**AFFIDAVIT OF HENDERSON**
VS.	)	**GIBBS, JR.**
	)	
HENDERSON GIBBS, JR.,	)	
	)	
	)	
	)	
DEFENDANT.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Henderson Gibbs, Jr., who after being duly sworn, hereby states as follows:

1. My name is Henderson Gibbs, Jr., and I am a resident of Aiken, South Carolina.

2. My wife, Georgia Gibbs, was in the hospital on the day of the hearing, December 04, 2019 at the University Hospital in Augusta, Georgia.

3. I was not able to attend the day of the hearing because she was receiving care for emergency open heart surgery that was done on December 03, 2019 by Dr. Mark Suzuki and required my attention and care.

4. The day of the hearing I attempted to contact the Special Referee to request a continuance but was unsuccessful.

5. At the time of the hearing I was not represented, but I have now retained counsel to represent me in this proceeding.

6. In light of this medical emergency I am requesting that the judgment be set aside and the opportunity for a new hearing.

FURTHER, THE AFFIANT SAYETH NAUGHT.

Henderson Gibbs Jr
Henderson Gibbs, Jr.

Sworn to before me
this 24th day of July 2020.
Anna M. Allison
My Commission Expires: Sept. 24, 2020

ANNA M. ALLISON
NOTARY
My Comm. Expires
September 24, 2020
PUBLIC
SOUTH CAROLINA

ELECTRONICALLY FILED - 2020 Jul 24 4:51 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

STATE OF SOUTH CAROLINA COUNTY OF COLLETON JOHN MURRAY GIBBS, PLAINTIFF, VS. HENDERSON GIBBS, JR., DEFENDANT.	IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-15-454 **MOTION TO SET ASIDE JUDGMENT**

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER JOHN MURRAY GIBBS, PLAINTIFF, VS. HENDERSON GIBBS, JR., DEFENDANT.	IN THE COMMON PLEAS COURT FIRST JUDICIAL CIRCUIT CASE NO.: 2015-CP-18-707 **MOTION TO SET ASIDE JUDGMENT**

PLEASE TAKE NOTICE that Defendant, Henderson Gibbs, Jr. (hereinafter "Defendant Henderson"), by and through his undersigned attorney will move within 10 days, or as soon thereafter as it may be heard, pursuant to Rule 59, SCRCP, and in the alternative Rule 60(b), SCRCP, for the Court to set aside the judgment in this case.

A final hearing in this matter was scheduled for December 04, 2019. On December 03, 2019 Defendant Henderson's wife, Georgia Gibbs, had emergency open heart surgery at University Hospital in Augusta, Georgia. See Statement of Rene Fritz and Dr. Mark Suzuki from 07/22/2020, a copy of which is attached hereto as Exhibit A. As a result of this medical emergency with his wife, Defendant Henderson was unable to travel to and attend the hearing. See Exhibit B.

Pursuant to the South Carolina Rules of Civil Procedure the Court may "open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a), SCRCP. Because Defendant Henderson was faced with a medical emergency and unable to attend the hearing, the Court should set aside the judgment and reschedule the matter for a hearing.

In the alternative, pursuant to Rule 60(b), SCRCP, "the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1), SCRCP. On the day of the hearing Defendant Henderson was unable to attend because he was attending to his wife who was recovering from open heart surgery at University Hospital in Augusta, Georgia. His inability to attend the hearing was due to excusable negligence and surprise at having a medical emergency. Defendant Henderson attempted to call and request a continuance but was not successful in reaching the Court in time.

But for the emergency, Defendant Henderson would have testified and presented evidence contradicting the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue in this case.

ELECTRONICALLY FILED - 2020 Jul 24 4:51 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

WHEREFORE, Defendant Henderson Gibbs, Jr. requests this Court set aside the judgment in this case and set a new hearing date.

RESPECTFULLY SUBMITTED,

S/JOHN T. KORNEGAY
P. Brandt Shelbourne, Esq. (SC # 15143)
John T. Kornegay, Esq. (SC # 102294
SHELBOURNE LAW
131 East Richardson Ave.
Summerville, SC 29483
843.871.2210 (P)
843.875.2224 (F)
Attorneys for Henderson Gibbs, Jr.

July 24, 2020
Summerville, South Carolina

ELECTRONICALLY FILED - 2020 Jul 24 4:51 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Exhibit A

ELECTRONICALLY FILED - 2020 Jul 24 4:51 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

UNIVERSITY CARDIOTHORACIC SURGERY
Timothy J. Hunter, M.D., FACS
Mark M. Suzuki, M.D., MBA, FACS
Christopher M. Ellington, M.D.

7/22/2020

To whom it may concern,

Mr. Gibbs was unable to be in court on 12/04/2019 to care for his spouse. His spouse had open heart surgery on 12/03/2019 and was still under the care of Dr. Mark Suzuki on 12/04/2019. The patient was unable to travel distances and required assistance with all activities of daily living due to sternal precautions following surgery. If there are any questions or concerns please contact Dr.Suzuki's office at 706-722-8242.

Very Respectfully,

Renee Fritz, P.A.C
Mark Suzuki MD, FACS
University Hospital Department of Cardiothoracic Surgery
1348 Walton Way Ste 5700
Augusta GA. 30901
706-722-8242 (p)

ELECTRONICALLY FILED - 2020 Jul 24 4:51 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Exhibit B

ELECTRONICALLY FILED - 2020 Jul 24 4:51 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

ELECTRONICALLY FILED - 2020 Jul 24 4:51 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

STATE OF SOUTH CAROLINA)	IN THE COMMON PLEAS COURT
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON)	CASE NO.: 2015-CP-15-454
)	
JOHN MURRAY GIBBS,)	
)	
PLAINTIFF,)	
)	**AFFIDAVIT OF HENDERSON**
VS.)	**GIBBS, JR.**
)	
HENDERSON GIBBS, JR.,)	
)	
)	
)	
DEFENDANT.)	
)	

PERSONALLY APPEARED BEFORE ME, Henderson Gibbs, Jr., who after being duly sworn, hereby states as follows:

1. My name is Henderson Gibbs, Jr., and I am a resident of Aiken, South Carolina.

2. My wife, Georgia Gibbs, was in the hospital on the day of the hearing, December 04, 2019 at the University Hospital in Augusta, Georgia.

3. I was not able to attend the day of the hearing because she was receiving care for emergency open heart surgery that was done on December 03, 2019 by Dr. Mark Suzuki and required my attention and care.

4. The day of the hearing I attempted to contact the Special Referee to request a continuance but was unsuccessful.

5. At the time of the hearing I was not represented, but I have now retained counsel to represent me in this proceeding.

6. In light of this medical emergency I am requesting that the judgment be set aside and the opportunity for a new hearing.

FURTHER, THE AFFIANT SAYETH NAUGHT.

Henderson Gibbs Jr
Henderson Gibbs, Jr.

Sworn to before me
this 24th day of July 2020.
Anna M. Allison
My Commission Expires: Sept. 24, 2020

ANNA M. ALLISON
NOTARY
My Comm. Expires
September 24, 2020
PUBLIC
SOUTH CAROLINA

ELECTRONICALLY FILED - 2020 Nov 05 4:55 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY AND DORCHESTER COUNTY

Court of Common Pleas

Patrick R. Watts, Special Referee

Dorchester Case No.: 2015-CP-18-00707

Colleton Case No.: 2015-CP-15-00454

Henderson Gibbs, Jr.,…….Appellant,

vs.

John Murray Gibbs,…….Respondent.

NOTICE OF APPEAL

Appellant Henderson Gibbs, Jr. respectfully appeals the Order of the Hon. Patrick Watts, Special Referee dated July 17, 2020, ruling on the partition matters arising out of Colleton County and Dorchester County, and the Order of the Hon. Patrick Watts, Special Referee dated October 07, 2020 denying Appellant's Motion for Reconsideration. A copy of the written orders are attached hereto as "Exhibit A" and "Exhibit B" respectively.

RESPECTFULLY SUBMITTED,

/s/John T. Kornegay
Shelbourne Law
P. Brandt Shelbourne, Esq.
John T. Kornegay, Esq.
131 East Richardson Ave.
Summerville, SC 29483
(843) 871-2210 (p)
(843) 875-2224 (f)
Counsel for Appellant

Other Attorneys of Record:

Andrew Shepherd, Esq.
Shepherd Law Firm
204 Brighton Park Blvd, Suite B
Summerville, SC 29486
(843) 900-3575 (p)
Counsel for Respondent

ELECTRONICALLY FILED - 2020 Nov 05 4:55 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

ELECTRONICALLY FILED - 2020 Nov 05 4:55 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

EXHIBIT “A”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-18-707

JOHN MURRAY GIBBS
PLAINTIFF(S)

HENDERSON GIBBS, JR.
DEFENDANT(S)

Submitted by: Andrew T. Shepherd	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
John Murray Gibbs	Henderson Gibbs, Jr.	$N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Murray Gibbs is the sole title holder of record.

TMS No.: 129-16-00-012

-ALSO-

Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

~~Circuit Court Judge~~
Special Referee
Patrick Watts

N/A
Judge Code

July 15 2020
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

ELECTRONICALLY FILED - 2020 Jul 15 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

7/17/2020

For Clerk of Court Office Use Only

7/17/2020

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Andrew T. Shepherd PO Box 130 Summerville, SC 29484 (via e-filing program)

Henderson Gibbs Jr 939 Old Graniteville Highway Aiken, SC 29801
Jeffrey T. Spell 1721 Ashley River Road Charleston, SC 29407

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2020 Jul 17 04:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

ELECTRONICALLY FILED - 2020 Jul 07 4:15 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

THIS MATTER is before me for partition of real property identified as Colleton County TMS No. 154-00-00-088 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 6, 2015 in the Colleton County Court of Common Pleas in case number 2015-CP-15-454, and for partition of real property identified as Dorchester County TMS No. 129-16-00-012 and Dorchester County TMS No. 130-13-00-050 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 8, 2015 in the Dorchester County Court of Common

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Pleas in case number 2015-CP-18-707. Pursuant to the Consent Order for Reference entered in this matter by the Honorable Perry M. Buckner on March 14, 2016 in the Colleton County Court of Common Pleas, and also by the separate Order for Reference to Special Referee entered in the Dorchester County Court of Common Pleas by the Honorable Diane S. Goodstein, I was appointed to serve as Special Referee to hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment. As the matters before me concern identical issues affecting the rights of the parties' in and to their shared ownership interests in separate parcels of real properties, which issues and shared interests further necessitate balancing the equities between them, the cases were heard together and judgment is hereby entered accordingly.

THE COLLETON COUNTY PROPERTY & CAUSE OF ACTION

The Colleton County property subject to this action, and generally known as Colleton County TMS No. 154-00-00-088, is more fully described as:

> ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317.
>
> TMS No. 154-00-00-088

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Consent Order entered March 14, 2016. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

THE DORCHESTER COUNTY PROPERTY & CAUSE OF ACTION

The Dorchester County Property subject to this action, and generally known as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050, is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Order entered February 18, 2016, which Order reflects that at the hearing thereon, Defendant agreed to the reference and my appointment. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.[1]

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the law pertaining to cases of this subject matter and the credibility of the testimony and evidence before me, I make the following findings of fact and conclusions of law:

1. Plaintiff and Defendant hold title to each Property as tenants in common. All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments. S.C. Code Ann. § 15-61-10 (A). Although the Property at issue would constitute heir's property pursuant to the Clementa Pinckney Uniform Partition of Heir's Property Act ("Act") enacted in 2017, this matter was commenced prior to enactment of the Act and is therefore not subject to the Act's requirements. 2016 Act No. 153, Section 6, provides "[t]his act takes effect on January 1, 2017, and applies to partition actions filed on or after that date." Notwithstanding the inapplicability of the Act's partition procedures, this Court still has jurisdiction to enter judgment for partition whether in kind or by allotment under the remaining provisions of Title 15, Chapter 61, South Carolina Code of Laws. "The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or

[1] The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case and thus indicating he was clearly aware the matter was scheduled.

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." S.C. Code Ann. § 15-61-50. For the reasons more fully explained below, after fully accounting for waste, betterments, and rents among cotenants, and balancing equities between them, I find and conclude under the facts and evidence presented in this case that partition by allotment can be fairly and impartially made as to each Property without injury to any of the parties in interest. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude that the right of first refusal provided for nonpetitioning tenants in common by S.C. Code Ann. 15-61-25(A) was timely and properly noticed by the Plaintiff, and the Defendant did not exercise that right.

2. All three properties are residential in nature and are owned solely by the Plaintiff and Defendant. Appraisal reports by William Ford of Appraisal Services of South Carolina, Inc., were admitted into evidence, without objection, and are uncontroverted for purposes of establishing the fair market value of the respective properties, detailing their condition and characteristics, and supporting the Plaintiff's representations as to the non-viability for partition in-kind. The uncontroverted testimony received by the Court reflects that following the conveyance of the properties to the Plaintiff and Defendant, the Plaintiff generally provided for the upkeep, maintenance, and taxes for the time period spanning 1997 through 2006, at which time Plaintiff moved to the State of New York. Following Plaintiff's move to New York, his visits to South Carolina were severely limited, and his ability to inspect and maintain the properties on a routine basis was hampered. In the years that followed, the Defendant, on his own accord and

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

through the assistance of his son, began to control and generally manage the properties by renting them to third parties—all without consultation or approval of the Plaintiff.

The Colleton County property is located in the Ridgeville, South Carolina, area on Camp Buddy Road and consists of approximately 1.9 acres, with a garage reportedly damaged by fire and another shed. The property is currently unoccupied, but a manufactured home was previously on the property which the Defendant rented to tenants for a number of years. However, the manufactured home was removed from the property and Defendant alleged to the Plaintiff that the same had burned. No rents were ever shared with the Plaintiff. The appraised fair market value of the property as of November 22, 2019, immediately prior to the hearing, is $26,650.00 or $13,500.00 per acre.

The Dorchester County properties are located at 205 North Maple Street and 187 Pigeon Bay Road in the Town of Summerville. The property at 205 North Maple Street is approximately 0.65 acres and consists of an approximately 2,005 square foot brick home, a small detached garage, as well as a manufactured home situated behind the primary house structure. The property at 187 Pigeon Bay Road is approximately 0.25 acres and consists of an approximately 1,083 square feet wood siding house, a shed, and an approximately 1,300 square foot garage/shop-like structure. Both properties are currently occupied by tenants placed by the Defendant or present thereon through the Defendant's son.

The 205 North Maple Street property is the home where both the Plaintiff and Defendant were raised as children. It is the Plaintiff's strong desire to see the home preserved and the property maintained and protected as it has great sentimental value to both him and his family. However, the uncontroverted testimony from the Plaintiff and the witnesses reflects that almost immediately after the Plaintiff moved to New York, the Defendant unilaterally and without Plaintiff's

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

permission converted the interior of the North Maple Street property so as to create a boarding house for roomers. Testimony of the witnesses and notations from the appraisal reflect that the property's condition is below average and had been allowed to deteriorate in some respects. As of the date of the final hearing, the property had been continuously rented a boarding house for not less than ten years at a weekly rental rate of $150.00 per tenant in the primary home, and $150.00 per tenant in the manufactured home. According to the Plaintiff, at all times for a period of no less than ten years, the property has been continuously occupied by at least five tenants paying weekly rent, and sometimes as many as seven tenants or more. The Defendant and the Defendant's son place these tenants in the property and collect all of the rents. No rents have ever been shared with the Plaintiff, and Plaintiff's attempts to gain routine entry to the property or to take back control at various times over the years have been rebuked by the Defendant and by those acting through him. Even when present upon the property, the Defendant's continuing placement of roomers/tenants and modifications to the condition in the property have rendered Plaintiff unable to use the property as a home or to peaceably enjoy his family's homestead as single family home.

The Pigeon Bay Road property is also occupied by tenants placed in the home by the Defendant or the Defendant's son. It is the uncontroverted testimony that the primary home on the Pigeon Bay Road property is currently rented to a third party who pays $800.00 per month in rent, which payments are believed to be made to the Defendant's son. Defendant has also erected a large detached garage/shop-like structure wherein third parties are known to socially congregate and loiter for what Plaintiff and Plaintiff's witnesses have come to learn is typically alcohol consumption and suspected gambling or other illicit activities in a somewhat club-like atmosphere. Of significant note within the appraisal report was the appraiser's inability to find any records regarding the large garage/shop-like structure and the appraiser's concern that the same may have

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

been constructed without proper permits which could expose the owners to liability. Like the other properties at issue, the Defendant has rented the Pigeon Bay Road home and engaged in other activities on the property, to include unilaterally erecting the potentially illegal and additional structure, without consulting Plaintiff or sharing in rents or revenues received. Attempts by Plaintiff and his wife to enter the property to investigate the nature of the activities of concern thereon were blocked by the Defendant and by individuals acting through him, which occurrence ultimately acted as the catalyst for initiating this action in order to protect and preserve the properties gifted to the Plaintiff and the Defendant by their father and to end the disparity of rights between the parties in and to the same. Testimony revealed that current rents for the property were being remitted to the Defendant's son, but no such rents or profits have ever been shared with the Plaintiff and suspected revenues from activities within the garage/shed-like structure have likewise never been shared or accounted for by the Defendant.

3. Plaintiff seeks both an accounting of rents and a partition of the properties by allotment. In actions for partition, allotment is statutorily preferred over judicial sale. Cox v. Frierson, 316 S.C. 469, 451 S.E.2d 392 (1994) (partition by allotment is statutorily preferred over judicial sale of the property). A partition in-kind or by allotment must be capable of being fairly and impartially made without injury to the parties in interest. S.C. Code Ann. 15-61-50.

4. None of the properties are personally occupied by the parties. The North Maple Street property is the childhood homestead of both the Plaintiff and the Defendant, but only the Plaintiff has appeared in this matter and raised (in addition to his monetary arguments) a non-monetary or sentimental attachment as an added basis for allotting full title and avoiding a forced sale. The Defendant has presented no evidence in this case aside from copies of expenditures he produced during discovery that were entered into evidence by the Plaintiff (discussed *infra*). Nor

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

has the Defendant presented argument outside of the general denial of his answer as to why the Plaintiff should not have the relief he seeks. In the absence of argument or the presentment of evidence from the Defendant in this matter, the Court's analysis as to matters or fairness, impartiality and manifest injury are limited to the evidence before me. Consideration of the elements of fairness, impartiality, and injury to the parties in this case therefore rests upon questions of valuation and the balancing of equities.

The appraisals of the properties reflect a fair market value of $25,650.00 or $13,500.00 per acre for the Colleton County property, a fair market value of $140,000.00 for the North Maple Street Property, and a fair market value of $140,000.00 for the Pigeon Bay Property. Based upon the uncontroverted evidence before me as to the size, shape and configuration of the North Maple Street and Pigeon Bay Road properties via testimony of the parties and the information contained within the appraisals, neither are capable of partition in-kind. While in-kind partition of the Colleton County property may be capable given its size and generally unimproved state, the Plaintiff's concession to allow allotment of the property to the Defendant without expectation of remuneration renders the necessity for partition in-kind or by sale moot as to that parcel.[2] Under the circumstances presented before as more fully detailed below, I find and conclude that partition by allotment can be made in a manner that is just as impartial and financially fair to the parties as would otherwise occur between them if partition by sale were directed at the fair market values for which the properties are appraised.[3]

[2] Plaintiff's concession is made in consideration of the relief granted herein of allotment of the Dorchester County properties unto the Plaintiff on such bases as more fully detailed in this Order.

[3] Plaintiff's concession as to the allotment of the Colleton County parcel actually results in a greater return to the Defendant than he would otherwise realize via partition by sale of the properties due to the judgment rendered against him below. In other words, the judgment is being satisfied by way of set off credits to the Plaintiff through the allotment process in lieu of collecting the same through sales proceeds should the properties be sold.

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

It is uncontroverted that Defendant has received rent from at least five tenants per week at the North Maple Street property for a period, at minimum, of not less than ten years in an amount of $150.00 per week per tenant. This rental rate amounts to $39,000.00 per year in rental income, and $390,000.00 over the ten year period that such rents have been collected by the Defendant.[4] In accounting for these rents, the Plaintiff is entitled to judgment declaring that one-half of those rents are due and owing to him in the amount of $195,000.00. Although additional rents are known to have been collected from the other properties by the Defendant, and perhaps other forms of income from the social activities thereon, Plaintiff elects solely to seek accounting of the North Maple Street rents for a period of ten years. To that end, pursuant to Plaintiff's discovery requests to the Defendant, the Defendant produced to Plaintiff's Counsel receipts and other alleged expenses that Defendant claims he incurred for property taxes, repairs, and maintenance from 1998 through 2015, all of which were admitted into evidence by the Plaintiff together with a summary of the same reflecting a total expenditure of $107,305.26 by the Defendant. Defendant produced no other evidence of expenditures. Although Plaintiff questions the legitimacy of many of the Defendant's claimed expenditures, Plaintiff proffers that if the same were legitimate he would have been obligated to contribute half of those expenses in the amount of $53,652.63.[5] As such, judgment as to the share of rents due and owing to Plaintiff must be reduced by his share of expenses such that the sum due from Defendant to the Plaintiff after deduction for expenses is

[4] Plaintiff believes rents have been collected in excess of that period but elects not to pursue additional funds.

[5] Notably, in assessing concepts of fairness, equity, and injury to the parties in ordering partition by allotment, it is the Plaintiff who proffered this evidence and voluntarily assumed legitimacy of the Defendant's expenditures when it was not Plaintiff's duty to do so—especially in light of the Defendant's failures to appear for trial. In doing so, the Plaintiff elected to forgo the opportunity to recover additional property or sums from the Defendant when he was not obligated to do so, and he further made substantial concession to permit the Defendant's receipt of full ownership of the Colleton County property in lieu of laying further claim to Plaintiff's equitable share whether in-kind or by sale. The Plaintiff's elections in this regard are impressively fair and just, and constitute the embodiment of the equitable maxim "[h]e who seeks equity must do equity." See Bank v. Wingard Properties Inc., 394 S.C. 241, 715 S.E.2d 348, 358 (S.C. App. 2011) (Discussing equitable maxims).

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

$141,347.71. I find and conclude that Plaintiff is entitled to entry of judgment on his accounting claim in the amount of $141,347.71. "Compensation to a co-tenant is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another." Ackerman v. Heard, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (Ct. App. 1986).

5. Plaintiff seeks allotment of the North Maple Street property and the Pigeon Bay Road property unto him, and informed the Court at the hearing that if such an allotment were made, Plaintiff would, in fairness and equity, be willing to relinquish title of the Colleton County property to his brother, the Defendant. I find and conclude based upon the uncontroverted evidence presented to me that the fair market value of the North Maple Street property is $140,000.00 and the fair market value of the Pigeon Bay Road property is $140,000.00. An allotment of these properties to the Plaintiff would necessitate Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in North Maple Street, and Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in Pigeon Bay Road, for a total of $140,000.00. However, in consideration of the judgment entered in favor of Plaintiff on his accounting claim, and adjusting such matters between the Plaintiff and Defendant as co-tenants, I find and conclude that the sum that would be due and owing from the Plaintiff to the Defendant arising from such allotment is fully negated by the sum due the Plaintiff from the judgment entered against the Defendant.

I further find and conclude that judgement should be entered in favor of John Murray Gibbs such that the properties located at 205 North Maple Street and 187 Pigeon Bay Road shall be partitioned by allotment unto John Murray Gibbs, and in making such allotment the judgment entered in his favor for $141,347.71 shall be deemed satisfied via application of the same as a set off credit to the sums that would otherwise be due and owing to Henderson Gibbs, Jr. for his

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

interests being severed from the title. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude, mindful of the stated consent of Plaintiff for the exercise of fairness and equity in rendering judgment in this action, that the Colleton County property on Camp Buddy Road shall be partitioned by allotment unto Henderson Gibbs, Jr., with Plaintiff, in consideration of his receipt of the other property interests in Dorchester County described hereinabove, waiving remuneration for the severing of his interests from the title of the Colleton County property. For the reasons set forth herein, I find and conclude that such an allotment between the parties does not work an injustice, and based upon the evidence before me and the equity both sought and volunteered by the Plaintiff, the net result to the Defendant is value in excess of what he would otherwise be entitled via partition in-kind or by sale but for Plaintiff's concessions.

6. Pursuant to Plaintiff's prayer for relief wherein Plaintiff sought such other and further relief as the Court may deem just and equitable, I find and conclude that Plaintiff is entitled to entry of judgment restraining and enjoining Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, from interfering in any way with Plaintiff's possession and control of the properties at 205 Maple Street and 187 Pigeon Bay Road. I further find and conclude that Plaintiff shall be entitled to entry of judgment directing Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, to remove any and all of Defendant's personal property and other personal effects which may be situated or stored on or within the properties at 205 Maple Street and 187 Pigeon Bay Road not less than fourteen (14) days following service of this Order upon the Defendant. Ex parte Dibble, 310

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

S.E.2d 440, 279 S.C. 592 (S.C. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

1. Judgment is entered against the Defendant, Henderson Gibbs, Jr., in the sum of $141,347.71, said sum to be deemed satisfied in the form of set off credits to the Plaintiff, John Murray Gibbs, via the partition by allotment unto him of the properties in Dorchester County as set forth hereinbelow.

2. The real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 is hereby partitioned by allotment unto John Murray Gibbs such that the interests of Henderson Gibbs, Jr., in and to the same shall terminate, and John Murray Gibbs shall, upon entry of this Order, be vested in and hold full title in and to the premises, which property is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring

ELECTRONICALLY FILED - 2020 Nov 05 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

3. The judgment entered hereinabove against Henderson Gibbs, Jr., in the sum of $141,437.71 is hereby satisfied, in full, by way of set off credit to John Murray Gibbs for the full value of Henderson Gibbs, Jr.'s interests in the real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 being allotted unto John Murray Gibbs by this Order, such that any remuneration which may otherwise have been due and owing to Henderson Gibbs, Jr. in the sum of $140,000.00 for the value of his severed interests is thereby set off, in full, by way of said satisfaction of the judgment against him.

4. The real property identified as Colleton County TMS No. 154-00-00-088 shall be partitioned by allotment unto Henderson Gibbs, Jr., such that the interests of John Murray Gibbs, in and to the same shall terminate, and Henderson Gibbs, Jr., shall upon entry of this Order be vested in and hold full title in and to the premises, which property is more fully described as:

ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-

ELECTRONICALLY FILED - 2020 Jul 07 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317. The interests of John Murray Gibbs being allotted unto Henderson Gibbs, Jr. by entry this Order such that Henderson Gibbs, Jr. is the sole title holder of record.

TMS No. 154-00-00-088

5. In consideration of the allotment unto John Murray Gibbs of Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 in the manner so directed herein, and pursuant to his consent as expressed by and through his agent at the final hearing, the allotment of Colleton County TMS No. 154-00-00-088 unto Henderson Gibbs, Jr. is made free from remuneration unto John Murray Gibbs for his severed interests.

6. The satisfaction of the judgment rendered against Henderson Gibbs, Jr. via set off credit to John Murray Gibbs for the allotment to him of Henderson Gibbs, Jr.'s interests in the Dorchester County properties, as well as John Murray Gibbs' voluntary waiver of remuneration otherwise due from Henderson Gibbs, Jr. for the allotment to him of John Murray Gibbs' interests in the Colleton County property, is and shall remain expressly conditioned upon the form and manner of partition as directed by this Order.

7. Henderson Gibbs, Jr, his agents, and any other persons acting through him or on his behalf, or claiming as such, are hereby restrained and enjoined from entering the property except for purposes permitted in Paragraph 8, below, and from harassing, or interfering in any way with John Murray Gibbs' peaceful enjoyment, possession, or control of the real properties

ELECTRONICALLY FILED - 2020 Jul 15 4:35 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina, to include all agents, employees, tenants and any other persons present upon the property with permission of John Murray Gibbs or acting through or on behalf of him.

8. Henderson Gibbs, Jr., his agents, and any other persons acting through him or on his behalf, within fourteen (14) days from the entry and service of this Order upon Henderson Gibbs, Jr., shall remove any and all personal property and other personal effects which may be situated upon or stored on or within the properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina.

9. The undersigned will retain jurisdiction to do all necessary acts incident to this partition action including, but not limited to, the issuance of a Writ of Assistance.

10. This Order shall be recorded in the Dorchester County ROD Office and indexed so as to reflect the divesting of title from Henderson Gibbs, Jr. unto John Murray Gibbs in the property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and more fully described in Paragraph 2 above.

11. This Order shall be recorded in the Colleton County ROD Office and indexed so as to reflect the divesting of title from John Murray Gibbs unto Henderson Gibbs, Jr., in the property identified as Colleton County TMS No. 154-00-00-088 and more fully described in Paragraph 4 above.

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
July 15, 2020

ELECTRONICALLY FILED - 2020 Nov 05 4:55 PM - DORCHESTER - COMMON PLEAS - CASE#2015CP1800707

EXHIBIT “B”

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	)	**ORDER**

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	)	**ORDER**

THIS MATTER came before me for hearing on the Defendant's Motion to Set Aside Judgment filed July 24, 2020. A hearing was held on August 27, 2020, via Microsoft Teams online conferencing software wherein John T. Kornegay, Esquire, appeared on behalf of Defendant, and Andrew T. Shepherd, Esquire, appeared on behalf of the Plaintiff. The hearing was both conducted and concluded without notice by the participants or the Court of any audio or visual defects.

ROA 0145

EFILED 2020 Oct 05 4:55 PM DORCHESTER COUNTY COMMON PLEAS CASE #2015CP1800507

Having considered the arguments of Counsel, the Motion, the record of this case, together with applicable law, I find and conclude that the Motion must be denied.

Plaintiff initiated these actions for partition of three parcels of real property situate in Colleton and Dorchester Counties in April of 2015. I was appointed Special Referee by Orders of Reference entered in both the Colleton and Dorchester County Court of Common Pleas hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted

evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.

The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear

ROA 0147

for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case. Defendant further contacted the office of the undersigned Special Referee inquiring as to what transpired at the hearing, at which time he was instructed to seek counsel. Throughout the proceedings Defendant was *pro se*.

On December 19, 2019, the Court received Notice of Electronic Filing of a Notice of Appearance by attorney Jeffrey T. Spell on behalf of Defendant. No further motions, notices, or other filings were made in the case until July 17, 2020, when the Final Order was entered by the Clerk of Court following this Court's careful consideration and thorough review of the evidence before it. On July 24, 2020, Defendant's Motion to Set Aside Judgment was filed and served, together with the Notice of Appearance of attorney John T. Kornegay as additional Counsel for the Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Defendant moves the Court to set aside the judgment in this case pursuant to Rule 59 and Rule 60(b), SCRCP, on the basis Defendant's wife had emergency open heart surgery on December 3, 2019, and as a result of the surgery Defendant was unable to travel to and attend the hearing on December 4, 2019. In support of his Motion, Defendant filed as an exhibit thereto a letter dated July 22, 2020 on the stationery of University Hospital Department of Cardiothoracic Surgery of Augusta bearing the names of Renee Frits, P.A.C. and Mark Suzuki, MD, FACS. The letter states that Defendant was unable to be in court on December 4, 2019 to care for his spouse, and further states Defendant's spouse had open heart surgery on December 3, 2019 and was still under the care of Dr. Mark Suzuki, and unable to travel distances and required assistance with all activities of daily living. Defendant also filed an Affidavit in support of his Motion stating he was not able to attend trial the day of the hearing because his wife was in the hospital and required

ROA 0148

Defendant's attention and care. Defendant's Motion alleges that but for the emergency, Defendant would have testified and presented evidence contradicting the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. The Court is sensitive to the medical events that affected the Decedent's spouse on December 3, 2019. However, for the reasons more fully stated below, the Court is not inclined to open its judgement, make amendments, direct entry of a new judgment, or relieve the Defendant from the judgment entered July 17, 2020.

2. "[l]n non-jury actions a new trial may be granted for any of the reasons for which rehearings have heretofore been granted in the courts of [this] state." *Blejski v. Blejski*, 325 S.C. 491,480 S.E.2d 462,466 n.4 (Ct. App. 1997); Rule 59(a)(2), SCRCP. Moreover, "[o]n a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a)(2), SCRCP. The "decision to grant a new trial is left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal." *McAlhaney v. McEleveen*, 413 S.C. 299, 303, 775 S.E.2d 411, 413 (Ct. App. 2015), *reh'g denied* (Aug. 20, 2015). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party cannot use a motion to reconsider to present an issue

he could have raised prior to judgment but did not." *Anderson Memorial Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (*citing C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E. 2d 268 (1993)); *See also Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

In the matter before me, Defendant did not appear on December 4, 2019, for the final day of the trial in this case to testify and present evidence which he claims contradicts the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. Defendant alleges his absence on December 4, 2019, was due to his wife's surgery which was performed the day prior to the hearing and his need to be present the following day to assist her in recovery. However, in considering the basis of Defendant's explanation for his absence on December 4, 2019, and whether the same warrants opening the judgment or granting new trial, the Court cannot escape consideration of the Defendant's unexplained absence on April 22, 2019—which is when the final hearing actually convened—as well as certain additional matters that weigh heavily on the Court's assessment of the Defendant's argument and credibility.

As detailed in the Procedural History above, the final hearing could not be fully completed on the date for which it was properly noticed and on which it actually convened on April 22, 2019, due to the Plaintiff's inability to receive reasonable access to the properties for purposes of appraisal. Notably, the properties at that time were under the control and occupation of the Defendant or those acting for him, and it was necessary for the Court to intervene such that the Plaintiff could obtain the appraisals necessary to permit this Court to properly render a decision. Additionally, the Defendant was aware of the December 4, 2019 hearing, and while his wife's surgery and condition would have been a basis reasonably considered by the Court in permitting a continuance had one been requested, the Defendant did not notify the Court at any time.

ROA 0150

While the Defendant called the Court and left a voicemail after the hearing had started on December 4, 2019, and further contacted the Court immediately following the hearing to find out what transpired, the Defendant made no mention or provided any correspondence regarding the alleged adverse or emergency conditions that precluded his presence. The Defendant states that the medical event on December 3, 2019, was an emergency, and while there is no doubt it was indeed a serious and severe matter, the physician's letter filed in support of Defendant's Motion does not describe the matter as an emergency or provide any information as to what may have precluded Defendant or someone on his behalf from contacting the Court via phone or through some other means the day preceding the hearing when the surgery took place, or prior to the hearing on the morning of December 4, 2019—much less why Defendant was unable to or did not inform the Court of such an alleged emergency immediately following the final date of the hearing. Given Defendant's unexplained absence from the first date of the final hearing, the delay in the proceedings for reasons reasonably attributable to him or to persons acting for him, and the dilatory nature of noting any form of emergency situation, the Court is not convinced that sufficient basis exists to alter, amend, or enter a new judgment, or that Defendant lacked reasonable opportunity to present his case or evidence.

The undersigned's own record of these cases includes a memorandum of Defendant's December 4, 2019, voicemail message. He missed the "mediation" and could be there in an hour if he could reschedule. He said nothing about his wife's surgery. A copy of that memorandum is submitted with this Order as Court Exhibit 1. The undersigned's record of these cases also includes a memorandum of a telephone conference with Attorney Jeffrey T. Spell on December 11, 2019. Defendant had contacted him. The undersigned directed him to contact Attorney Shepherd. Attorney Spell said nothing about any surgery. A copy of the memorandum of that telephone

conversation is submitted with this Order as Court Exhibit 2. Apparently, as of December 4 and December 11, Defendant's wife's surgery was not an issue that concerned him relative to the December 4 hearing.

2. Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). A court may relieve a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), SCRCP. In determining whether a judgment should be set aside under Rule 60(b)(1), "[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant." *N.H. Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct.App.1993) (*quoting Harry M. Lightsey & James F. Flanagan*, South Carolina Civil Procedure 82 (1985)).

Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *In re Vora,* 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). For the reasons stated above, and in reiteration of the same, given: (1) the Defendant's unexplained absence from the first date of the final hearing whereat he could have presented evidence and for which he had adequate notice, adequate opportunity to appear, the right to introduce evidence, and to confront the Plaintiff; (2) the delay in completing the proceedings for reasons reasonably attributable to him or to persons acting for him; and (3) the dilatory nature of noting any form of emergency situation—together with the lack of evidence as to why a continuance could not otherwise be requested or simple notice given to the Court prior to the final date of hearing or immediately thereafter—the Court is not convinced that sufficient or credible basis exists to set aside the judgment for excusable neglect, or that Defendant did not have adequate opportunity to be present and heard, or to otherwise avail himself of such opportunity had he acted with diligence.

For the foregoing reasons, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Set Aside Judgment is **DENIED.**

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
October 3, 2020

ELECTRONICALLY FILED 2020-10-05 15:55:07 COMMON PLEAS CASE #2016CP1800507

12/4/19

PC| Mr. Gibbs

843-343-3954

* he missed medicine.
* he can be here in an hour if he can reschedule.

EFILED 2020 Oct 05 7:15:58 PM CRIMINAL COMMON PLEAS CASE# 2016CP1800507

EXHIBIT 1
PENGAD 800-631-6989

12/11/1

PH Jeff Spell

843-452-3553

He contacted by Henderson Arbor

He to contact Cindy Shepherd for copy of proposed order

EEECTRONICALLY FILED 2020 Nov 05 04:15 PM CST IN THE CIRCUIT COURT OF HORRY COUNTY, SOUTH CAROLINA COMMON PLEAS CASE #2016CP2600507

EXHIBIT 2
PENGAD 800-631-6989

ELECTRONICALLY FILED - 2020 Nov 06 2:27 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Patrick R. Watts, Special Referee

Colleton Case No.: 2015-CP-15-00454

Henderson Gibbs, Jr.,…….Appellant,

vs.

John Murray Gibbs,…….Respondent.

NOTICE OF APPEAL

Appellant Henderson Gibbs, Jr. respectfully appeals the Order of the Hon. Patrick Watts, Special Referee dated July 17, 2020, ruling on the partition matter arising out of Colleton County, and the Order of the Hon. Patrick Watts, Special Referee dated October 07, 2020 denying Appellant's Motion for Reconsideration. A copy of the written orders are attached hereto as "Exhibit A" and "Exhibit B" respectively.

RESPECTFULLY SUBMITTED,

/s/John T. Kornegay

Shelbourne Law
P. Brandt Shelbourne, Esq.
John T. Kornegay, Esq.
131 East Richardson Ave.
Summerville, SC 29483
(843) 871-2210 (p)
(843) 875-2224 (f)
Counsel for Appellant

Other Attorneys of Record:

Andrew Shepherd, Esq.
Shepherd Law Firm
204 Brighton Park Blvd, Suite B
Summerville, SC 29486
(843) 900-3575 (p)
Counsel for Respondent

ELECTRONICALLY FILED - 2020 Nov 06 2:27 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

ELECTRONICALLY FILED - 2020 Nov 06 2:27 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

EXHIBIT “A”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-18-707

JOHN MURRAY GIBBS
PLAINTIFF(S)

HENDERSON GIBBS, JR.
DEFENDANT(S)

Submitted by: Andrew T. Shepherd	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
John Murray Gibbs	Henderson Gibbs, Jr.	$N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John

ELECTRONICALLY FILED 2020-NOV-07 01:12 AM DORCHESTER COMMON PLEAS CASE#2015CP1800707

Murray Gibbs is the sole title holder of record.

TMS No.: 129-16-00-012

-ALSO-

Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

~~Circuit Court Judge~~
Special Referee
Patrick Watts

N/A
Judge Code

July 15 2020
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

7/17/2020

For Clerk of Court Office Use Only

7/17/2020

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Andrew T. Shepherd PO Box 130 Summerville, SC 29484 (via e-filing program)

Henderson Gibbs Jr 939 Old Graniteville Highway Aiken, SC 29801
Jeffrey T. Spell 1721 Ashley River Road Charleston, SC 29407

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED 2020 JUN 17 01:12 PM DORCHESTER COMMON PLEAS CASE#2015CP1800407

ELECTRONICALLY FILED 2020-JUN-07 01:12 AM DORCHESTER COMMON PLEAS CASE #2015CP1800707

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**FINAL ORDER** (*Partition*)

THIS MATTER is before me for partition of real property identified as Colleton County TMS No. 154-00-00-088 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 6, 2015 in the Colleton County Court of Common Pleas in case number 2015-CP-15-454, and for partition of real property identified as Dorchester County TMS No. 129-16-00-012 and Dorchester County TMS No. 130-13-00-050 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 8, 2015 in the Dorchester County Court of Common

ELECTRONICALLY FILED 2020-NOV-07 01:12 AM DORCHESTER COMMON PLEAS CASE#2015CP1800707

Pleas in case number 2015-CP-18-707. Pursuant to the Consent Order for Reference entered in this matter by the Honorable Perry M. Buckner on March 14, 2016 in the Colleton County Court of Common Pleas, and also by the separate Order for Reference to Special Referee entered in the Dorchester County Court of Common Pleas by the Honorable Diane S. Goodstein, I was appointed to serve as Special Referee to hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment. As the matters before me concern identical issues affecting the rights of the parties' in and to their shared ownership interests in separate parcels of real properties, which issues and shared interests further necessitate balancing the equities between them, the cases were heard together and judgment is hereby entered accordingly.

THE COLLETON COUNTY PROPERTY & CAUSE OF ACTION

The Colleton County property subject to this action, and generally known as Colleton County TMS No. 154-00-00-088, is more fully described as:

> ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317.
>
> TMS No. 154-00-00-088

ELECTRONICALLY FILED 2020-NOV-07 01:12 AM DORCHESTER COMMON PLEAS CASE#2015CP1800507

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Consent Order entered March 14, 2016. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

THE DORCHESTER COUNTY PROPERTY & CAUSE OF ACTION

The Dorchester County Property subject to this action, and generally known as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050, is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of

ELECTRONICALLY FILED 2020 Nov 07 01:12 PM DORCHESTER COMMON PLEAS CASE#2015CP1800507

Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Order entered February 18, 2016, which Order reflects that at the hearing thereon, Defendant agreed to the reference and my appointment. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John

Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was

FILED ELECTRONICALLY 12/20/2019 11:12 AM DORCHESTER COMMON PLEAS CASE #2019CP1800707

received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.[1]

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the law pertaining to cases of this subject matter and the credibility of the testimony and evidence before me, I make the following findings of fact and conclusions of law:

1. Plaintiff and Defendant hold title to each Property as tenants in common. All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments. S.C. Code Ann. § 15-61-10 (A). Although the Property at issue would constitute heir's property pursuant to the Clementa Pinckney Uniform Partition of Heir's Property Act ("Act") enacted in 2017, this matter was commenced prior to enactment of the Act and is therefore not subject to the Act's requirements. 2016 Act No. 153, Section 6, provides "[t]his act takes effect on January 1, 2017, and applies to partition actions filed on or after that date." Notwithstanding the inapplicability of the Act's partition procedures, this Court still has jurisdiction to enter judgment for partition whether in kind or by allotment under the remaining provisions of Title 15, Chapter 61, South Carolina Code of Laws. "The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or

[1] The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case and thus indicating he was clearly aware the matter was scheduled.

by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." S.C. Code Ann. § 15-61-50. For the reasons more fully explained below, after fully accounting for waste, betterments, and rents among cotenants, and balancing equities between them, I find and conclude under the facts and evidence presented in this case that partition by allotment can be fairly and impartially made as to each Property without injury to any of the parties in interest. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude that the right of first refusal provided for nonpetitioning tenants in common by S.C. Code Ann. 15-61-25(A) was timely and properly noticed by the Plaintiff, and the Defendant did not exercise that right.

2. All three properties are residential in nature and are owned solely by the Plaintiff and Defendant. Appraisal reports by William Ford of Appraisal Services of South Carolina, Inc., were admitted into evidence, without objection, and are uncontroverted for purposes of establishing the fair market value of the respective properties, detailing their condition and characteristics, and supporting the Plaintiff's representations as to the non-viability for partition in-kind. The uncontroverted testimony received by the Court reflects that following the conveyance of the properties to the Plaintiff and Defendant, the Plaintiff generally provided for the upkeep, maintenance, and taxes for the time period spanning 1997 through 2006, at which time Plaintiff moved to the State of New York. Following Plaintiff's move to New York, his visits to South Carolina were severely limited, and his ability to inspect and maintain the properties on a routine basis was hampered. In the years that followed, the Defendant, on his own accord and

through the assistance of his son, began to control and generally manage the properties by renting them to third parties—all without consultation or approval of the Plaintiff.

The Colleton County property is located in the Ridgeville, South Carolina, area on Camp Buddy Road and consists of approximately 1.9 acres, with a garage reportedly damaged by fire and another shed. The property is currently unoccupied, but a manufactured home was previously on the property which the Defendant rented to tenants for a number of years. However, the manufactured home was removed from the property and Defendant alleged to the Plaintiff that the same had burned. No rents were ever shared with the Plaintiff. The appraised fair market value of the property as of November 22, 2019, immediately prior to the hearing, is $26,650.00 or $13,500.00 per acre.

The Dorchester County properties are located at 205 North Maple Street and 187 Pigeon Bay Road in the Town of Summerville. The property at 205 North Maple Street is approximately 0.65 acres and consists of an approximately 2,005 square foot brick home, a small detached garage, as well as a manufactured home situated behind the primary house structure. The property at 187 Pigeon Bay Road is approximately 0.25 acres and consists of an approximately 1,083 square feet wood siding house, a shed, and an approximately 1,300 square foot garage/shop-like structure. Both properties are currently occupied by tenants placed by the Defendant or present thereon through the Defendant's son.

The 205 North Maple Street property is the home where both the Plaintiff and Defendant were raised as children. It is the Plaintiff's strong desire to see the home preserved and the property maintained and protected as it has great sentimental value to both him and his family. However, the uncontroverted testimony from the Plaintiff and the witnesses reflects that almost immediately after the Plaintiff moved to New York, the Defendant unilaterally and without Plaintiff's

permission converted the interior of the North Maple Street property so as to create a boarding house for roomers. Testimony of the witnesses and notations from the appraisal reflect that the property's condition is below average and had been allowed to deteriorate in some respects. As of the date of the final hearing, the property had been continuously rented a boarding house for not less than ten years at a weekly rental rate of $150.00 per tenant in the primary home, and $150.00 per tenant in the manufactured home. According to the Plaintiff, at all times for a period of no less than ten years, the property has been continuously occupied by at least five tenants paying weekly rent, and sometimes as many as seven tenants or more. The Defendant and the Defendant's son place these tenants in the property and collect all of the rents. No rents have ever been shared with the Plaintiff, and Plaintiff's attempts to gain routine entry to the property or to take back control at various times over the years have been rebuked by the Defendant and by those acting through him. Even when present upon the property, the Defendant's continuing placement of roomers/tenants and modifications to the condition in the property have rendered Plaintiff unable to use the property as a home or to peaceably enjoy his family's homestead as single family home.

The Pigeon Bay Road property is also occupied by tenants placed in the home by the Defendant or the Defendant's son. It is the uncontroverted testimony that the primary home on the Pigeon Bay Road property is currently rented to a third party who pays $800.00 per month in rent, which payments are believed to be made to the Defendant's son. Defendant has also erected a large detached garage/shop-like structure wherein third parties are known to socially congregate and loiter for what Plaintiff and Plaintiff's witnesses have come to learn is typically alcohol consumption and suspected gambling or other illicit activities in a somewhat club-like atmosphere. Of significant note within the appraisal report was the appraiser's inability to find any records regarding the large garage/shop-like structure and the appraiser's concern that the same may have

been constructed without proper permits which could expose the owners to liability. Like the other properties at issue, the Defendant has rented the Pigeon Bay Road home and engaged in other activities on the property, to include unilaterally erecting the potentially illegal and additional structure, without consulting Plaintiff or sharing in rents or revenues received. Attempts by Plaintiff and his wife to enter the property to investigate the nature of the activities of concern thereon were blocked by the Defendant and by individuals acting through him, which occurrence ultimately acted as the catalyst for initiating this action in order to protect and preserve the properties gifted to the Plaintiff and the Defendant by their father and to end the disparity of rights between the parties in and to the same. Testimony revealed that current rents for the property were being remitted to the Defendant's son, but no such rents or profits have ever been shared with the Plaintiff and suspected revenues from activities within the garage/shed-like structure have likewise never been shared or accounted for by the Defendant.

3. Plaintiff seeks both an accounting of rents and a partition of the properties by allotment. In actions for partition, allotment is statutorily preferred over judicial sale. Cox v. Frierson, 316 S.C. 469, 451 S.E.2d 392 (1994) (partition by allotment is statutorily preferred over judicial sale of the property). A partition in-kind or by allotment must be capable of being fairly and impartially made without injury to the parties in interest. S.C. Code Ann. 15-61-50.

4. None of the properties are personally occupied by the parties. The North Maple Street property is the childhood homestead of both the Plaintiff and the Defendant, but only the Plaintiff has appeared in this matter and raised (in addition to his monetary arguments) a non-monetary or sentimental attachment as an added basis for allotting full title and avoiding a forced sale. The Defendant has presented no evidence in this case aside from copies of expenditures he produced during discovery that were entered into evidence by the Plaintiff (discussed *infra*). Nor

has the Defendant presented argument outside of the general denial of his answer as to why the Plaintiff should not have the relief he seeks. In the absence of argument or the presentment of evidence from the Defendant in this matter, the Court's analysis as to matters or fairness, impartiality and manifest injury are limited to the evidence before me. Consideration of the elements of fairness, impartiality, and injury to the parties in this case therefore rests upon questions of valuation and the balancing of equities.

The appraisals of the properties reflect a fair market value of $25,650.00 or $13,500.00 per acre for the Colleton County property, a fair market value of $140,000.00 for the North Maple Street Property, and a fair market value of $140,000.00 for the Pigeon Bay Property. Based upon the uncontroverted evidence before me as to the size, shape and configuration of the North Maple Street and Pigeon Bay Road properties via testimony of the parties and the information contained within the appraisals, neither are capable of partition in-kind. While in-kind partition of the Colleton County property may be capable given its size and generally unimproved state, the Plaintiff's concession to allow allotment of the property to the Defendant without expectation of remuneration renders the necessity for partition in-kind or by sale moot as to that parcel.[2] Under the circumstances presented before as more fully detailed below, I find and conclude that partition by allotment can be made in a manner that is just as impartial and financially fair to the parties as would otherwise occur between them if partition by sale were directed at the fair market values for which the properties are appraised.[3]

[2] Plaintiff's concession is made in consideration of the relief granted herein of allotment of the Dorchester County properties unto the Plaintiff on such bases as more fully detailed in this Order.

[3] Plaintiff's concession as to the allotment of the Colleton County parcel actually results in a greater return to the Defendant than he would otherwise realize via partition by sale of the properties due to the judgment rendered against him below. In other words, the judgment is being satisfied by way of set off credits to the Plaintiff through the allotment process in lieu of collecting the same through sales proceeds should the properties be sold.

ELECTRONICALLY FILED 2020 Nov 07 01:12 PM DORCHESTER COMMON PLEAS CASE 2015CP1800707

It is uncontroverted that Defendant has received rent from at least five tenants per week at the North Maple Street property for a period, at minimum, of not less than ten years in an amount of $150.00 per week per tenant. This rental rate amounts to $39,000.00 per year in rental income, and $390,000.00 over the ten year period that such rents have been collected by the Defendant.[4] In accounting for these rents, the Plaintiff is entitled to judgment declaring that one-half of those rents are due and owing to him in the amount of $195,000.00. Although additional rents are known to have been collected from the other properties by the Defendant, and perhaps other forms of income from the social activities thereon, Plaintiff elects solely to seek accounting of the North Maple Street rents for a period of ten years. To that end, pursuant to Plaintiff's discovery requests to the Defendant, the Defendant produced to Plaintiff's Counsel receipts and other alleged expenses that Defendant claims he incurred for property taxes, repairs, and maintenance from 1998 through 2015, all of which were admitted into evidence by the Plaintiff together with a summary of the same reflecting a total expenditure of $107,305.26 by the Defendant. Defendant produced no other evidence of expenditures. Although Plaintiff questions the legitimacy of many of the Defendant's claimed expenditures, Plaintiff proffers that if the same were legitimate he would have been obligated to contribute half of those expenses in the amount of $53,652.63.[5] As such, judgment as to the share of rents due and owing to Plaintiff must be reduced by his share of expenses such that the sum due from Defendant to the Plaintiff after deduction for expenses is

[4] Plaintiff believes rents have been collected in excess of that period but elects not to pursue additional funds.

[5] Notably, in assessing concepts of fairness, equity, and injury to the parties in ordering partition by allotment, it is the Plaintiff who proffered this evidence and voluntarily assumed legitimacy of the Defendant's expenditures when it was not Plaintiff's duty to do so—especially in light of the Defendant's failures to appear for trial. In doing so, the Plaintiff elected to forgo the opportunity to recover additional property or sums from the Defendant when he was not obligated to do so, and he further made substantial concession to permit the Defendant's receipt of full ownership of the Colleton County property in lieu of laying further claim to Plaintiff's equitable share whether in-kind or by sale. The Plaintiff's elections in this regard are impressively fair and just, and constitute the embodiment of the equitable maxim "[h]e who seeks equity must do equity." See Bank v. Wingard Properties Inc., 394 S.C. 241, 715 S.E.2d 348, 358 (S.C. App. 2011) (Discussing equitable maxims).

ELECTRONICALLY FILED 2020-NOV-07 01:12 AM DORCHESTER COMMON PLEAS CASE#2015CP1800707

$141,347.71. I find and conclude that Plaintiff is entitled to entry of judgment on his accounting claim in the amount of $141,347.71. "Compensation to a co-tenant is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another." Ackerman v. Heard, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (Ct. App. 1986).

5. Plaintiff seeks allotment of the North Maple Street property and the Pigeon Bay Road property unto him, and informed the Court at the hearing that if such an allotment were made, Plaintiff would, in fairness and equity, be willing to relinquish title of the Colleton County property to his brother, the Defendant. I find and conclude based upon the uncontroverted evidence presented to me that the fair market value of the North Maple Street property is $140,000.00 and the fair market value of the Pigeon Bay Road property is $140,000.00. An allotment of these properties to the Plaintiff would necessitate Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in North Maple Street, and Plaintiff's remittance of $70,000.00 to the Defendant for Defendant's interest in Pigeon Bay Road, for a total of $140,000.00. However, in consideration of the judgment entered in favor of Plaintiff on his accounting claim, and adjusting such matters between the Plaintiff and Defendant as co-tenants, I find and conclude that the sum that would be due and owing from the Plaintiff to the Defendant arising from such allotment is fully negated by the sum due the Plaintiff from the judgment entered against the Defendant.

I further find and conclude that judgement should be entered in favor of John Murray Gibbs such that the properties located at 205 North Maple Street and 187 Pigeon Bay Road shall be partitioned by allotment unto John Murray Gibbs, and in making such allotment the judgment entered in his favor for $141,347.71 shall be deemed satisfied via application of the same as a set off credit to the sums that would otherwise be due and owing to Henderson Gibbs, Jr. for his

interests being severed from the title. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude, mindful of the stated consent of Plaintiff for the exercise of fairness and equity in rendering judgment in this action, that the Colleton County property on Camp Buddy Road shall be partitioned by allotment unto Henderson Gibbs, Jr., with Plaintiff, in consideration of his receipt of the other property interests in Dorchester County described hereinabove, waiving remuneration for the severing of his interests from the title of the Colleton County property. For the reasons set forth herein, I find and conclude that such an allotment between the parties does not work an injustice, and based upon the evidence before me and the equity both sought and volunteered by the Plaintiff, the net result to the Defendant is value in excess of what he would otherwise be entitled via partition in-kind or by sale but for Plaintiff's concessions.

6. Pursuant to Plaintiff's prayer for relief wherein Plaintiff sought such other and further relief as the Court may deem just and equitable, I find and conclude that Plaintiff is entitled to entry of judgment restraining and enjoining Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, from interfering in any way with Plaintiff's possession and control of the properties at 205 Maple Street and 187 Pigeon Bay Road. I further find and conclude that Plaintiff shall be entitled to entry of judgment directing Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, to remove any and all of Defendant's personal property and other personal effects which may be situated or stored on or within the properties at 205 Maple Street and 187 Pigeon Bay Road not less than fourteen (14) days following service of this Order upon the Defendant. Ex parte Dibble, 310

ELECTRONICALLY FILED 2020-NOV-07 01:12 AM DORCHESTER COMMON PLEAS CASE#2015CP1800707

ELECTRONICALLY FILED 2020 Nov 07 01:12 AM DORCHESTER COMMON PLEAS CASE 2015CP1800707

S.E.2d 440, 279 S.C. 592 (S.C. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

1. Judgment is entered against the Defendant, Henderson Gibbs, Jr., in the sum of $141,347.71, said sum to be deemed satisfied in the form of set off credits to the Plaintiff, John Murray Gibbs, via the partition by allotment unto him of the properties in Dorchester County as set forth hereinbelow.

2. The real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 is hereby partitioned by allotment unto John Murray Gibbs such that the interests of Henderson Gibbs, Jr., in and to the same shall terminate, and John Murray Gibbs shall, upon entry of this Order, be vested in and hold full title in and to the premises, which property is more fully described as:

> ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.
>
> BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.
>
> TMS No.: 129-16-00-012
>
> -ALSO-
>
> Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring

ELECTRONICALLY FILED 2020 Nov 07 01:12 AM DORCHESTER COMMON PLEAS CASE#2015CP1800707

thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

3. The judgment entered hereinabove against Henderson Gibbs, Jr., in the sum of $141,437.71 is hereby satisfied, in full, by way of set off credit to John Murray Gibbs for the full value of Henderson Gibbs, Jr.'s interests in the real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 being allotted unto John Murray Gibbs by this Order, such that any remuneration which may otherwise have been due and owing to Henderson Gibbs, Jr. in the sum of $140,000.00 for the value of his severed interests is thereby set off, in full, by way of said satisfaction of the judgment against him.

4. The real property identified as Colleton County TMS No. 154-00-00-088 shall be partitioned by allotment unto Henderson Gibbs, Jr., such that the interests of John Murray Gibbs, in and to the same shall terminate, and Henderson Gibbs, Jr., shall upon entry of this Order be vested in and hold full title in and to the premises, which property is more fully described as:

ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-

00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317. The interests of John Murray Gibbs being allotted unto Henderson Gibbs, Jr. by entry this Order such that Henderson Gibbs, Jr. is the sole title holder of record.

TMS No. 154-00-00-088

5. In consideration of the allotment unto John Murray Gibbs of Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 in the manner so directed herein, and pursuant to his consent as expressed by and through his agent at the final hearing, the allotment of Colleton County TMS No. 154-00-00-088 unto Henderson Gibbs, Jr. is made free from remuneration unto John Murray Gibbs for his severed interests.

6. The satisfaction of the judgment rendered against Henderson Gibbs, Jr. via set off credit to John Murray Gibbs for the allotment to him of Henderson Gibbs, Jr.'s interests in the Dorchester County properties, as well as John Murray Gibbs' voluntary waiver of remuneration otherwise due from Henderson Gibbs, Jr. for the allotment to him of John Murray Gibbs' interests in the Colleton County property, is and shall remain expressly conditioned upon the form and manner of partition as directed by this Order.

7. Henderson Gibbs, Jr, his agents, and any other persons acting through him or on his behalf, or claiming as such, are hereby restrained and enjoined from entering the property except for purposes permitted in Paragraph 8, below, and from harassing, or interfering in any way with John Murray Gibbs' peaceful enjoyment, possession, or control of the real properties

identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina, to include all agents, employees, tenants and any other persons present upon the property with permission of John Murray Gibbs or acting through or on behalf of him.

8. Henderson Gibbs, Jr., his agents, and any other persons acting through him or on his behalf, within fourteen (14) days from the entry and service of this Order upon Henderson Gibbs, Jr., shall remove any and all personal property and other personal effects which may be situated upon or stored on or within the properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina.

9. The undersigned will retain jurisdiction to do all necessary acts incident to this partition action including, but not limited to, the issuance of a Writ of Assistance.

10. This Order shall be recorded in the Dorchester County ROD Office and indexed so as to reflect the divesting of title from Henderson Gibbs, Jr. unto John Murray Gibbs in the property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and more fully described in Paragraph 2 above.

11. This Order shall be recorded in the Colleton County ROD Office and indexed so as to reflect the divesting of title from John Murray Gibbs unto Henderson Gibbs, Jr., in the property identified as Colleton County TMS No. 154-00-00-088 and more fully described in Paragraph 4 above.

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
July 15, 2020

ELECTRONICALLY FILED - 2020 Nov 06 2:27 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

EXHIBIT “B”

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2015-CP-15-454
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**ORDER**

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CASE No. 2015-CP-18-707
JOHN MURRAY GIBBS, Plaintiff, vs. HENDERSON GIBBS, JR., Defendant.	**ORDER**

THIS MATTER came before me for hearing on the Defendant's Motion to Set Aside Judgment filed July 24, 2020. A hearing was held on August 27, 2020, via Microsoft Teams online conferencing software wherein John T. Kornegay, Esquire, appeared on behalf of Defendant, and Andrew T. Shepherd, Esquire, appeared on behalf of the Plaintiff. The hearing was both conducted and concluded without notice by the participants or the Court of any audio or visual defects.

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Having considered the arguments of Counsel, the Motion, the record of this case, together with applicable law, I find and conclude that the Motion must be denied.

Plaintiff initiated these actions for partition of three parcels of real property situate in Colleton and Dorchester Counties in April of 2015. I was appointed Special Referee by Orders of Reference entered in both the Colleton and Dorchester County Court of Common Pleas hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.

The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case. Defendant further contacted the office of the undersigned Special Referee inquiring as to what transpired at the hearing, at which time he was instructed to seek counsel. Throughout the proceedings Defendant was *pro se*.

On December 19, 2019, the Court received Notice of Electronic Filing of a Notice of Appearance by attorney Jeffrey T. Spell on behalf of Defendant. No further motions, notices, or other filings were made in the case until July 17, 2020, when the Final Order was entered by the Clerk of Court following this Court's careful consideration and thorough review of the evidence before it. On July 24, 2020, Defendant's Motion to Set Aside Judgment was filed and served, together with the Notice of Appearance of attorney John T. Kornegay as additional Counsel for the Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Defendant moves the Court to set aside the judgment in this case pursuant to Rule 59 and Rule 60(b), SCRCP, on the basis Defendant's wife had emergency open heart surgery on December 3, 2019, and as a result of the surgery Defendant was unable to travel to and attend the hearing on December 4, 2019. In support of his Motion, Defendant filed as an exhibit thereto a letter dated July 22, 2020 on the stationery of University Hospital Department of Cardiothoracic Surgery of Augusta bearing the names of Renee Frits, P.A.C. and Mark Suzuki, MD, FACS. The letter states that Defendant was unable to be in court on December 4, 2019 to care for his spouse, and further states Defendant's spouse had open heart surgery on December 3, 2019 and was still under the care of Dr. Mark Suzuki, and unable to travel distances and required assistance with all activities of daily living. Defendant also filed an Affidavit in support of his Motion stating he was not able to attend trial the day of the hearing because his wife was in the hospital and required

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

Defendant's attention and care. Defendant's Motion alleges that but for the emergency, Defendant would have testified and presented evidence contradicting the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. The Court is sensitive to the medical events that affected the Decedent's spouse on December 3, 2019. However, for the reasons more fully stated below, the Court is not inclined to open its judgement, make amendments, direct entry of a new judgment, or relieve the Defendant from the judgment entered July 17, 2020.

2. "[l]n non-jury actions a new trial may be granted for any of the reasons for which rehearings have heretofore been granted in the courts of [this] state." *Blejski v. Blejski*, 325 S.C. 491,480 S.E.2d 462,466 n.4 (Ct. App. 1997); Rule 59(a)(2), SCRCP. Moreover, "[o]n a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a)(2), SCRCP. The "decision to grant a new trial is left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal." *McAlhaney v. McEleveen*, 413 S.C. 299, 303, 775 S.E.2d 411, 413 (Ct. App. 2015), *reh'g denied* (Aug. 20, 2015). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party cannot use a motion to reconsider to present an issue

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

he could have raised prior to judgment but did not." *Anderson Memorial Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (*citing C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E. 2d 268 (1993)); *See also Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

In the matter before me, Defendant did not appear on December 4, 2019, for the final day of the trial in this case to testify and present evidence which he claims contradicts the Plaintiff on the monetary amounts received as rental income and spent on expenses and repairs for the properties at issue. Defendant alleges his absence on December 4, 2019, was due to his wife's surgery which was performed the day prior to the hearing and his need to be present the following day to assist her in recovery. However, in considering the basis of Defendant's explanation for his absence on December 4, 2019, and whether the same warrants opening the judgment or granting new trial, the Court cannot escape consideration of the Defendant's unexplained absence on April 22, 2019—which is when the final hearing actually convened—as well as certain additional matters that weigh heavily on the Court's assessment of the Defendant's argument and credibility.

As detailed in the Procedural History above, the final hearing could not be fully completed on the date for which it was properly noticed and on which it actually convened on April 22, 2019, due to the Plaintiff's inability to receive reasonable access to the properties for purposes of appraisal. Notably, the properties at that time were under the control and occupation of the Defendant or those acting for him, and it was necessary for the Court to intervene such that the Plaintiff could obtain the appraisals necessary to permit this Court to properly render a decision. Additionally, the Defendant was aware of the December 4, 2019 hearing, and while his wife's surgery and condition would have been a basis reasonably considered by the Court in permitting a continuance had one been requested, the Defendant did not notify the Court at any time.

ELECTRONICALLY FILED – 2020 Oct 07 12:50 PM – COLLETON – COMMON PLEAS – CASE#2015CP1500454

While the Defendant called the Court and left a voicemail after the hearing had started on December 4, 2019, and further contacted the Court immediately following the hearing to find out what transpired, the Defendant made no mention or provided any correspondence regarding the alleged adverse or emergency conditions that precluded his presence. The Defendant states that the medical event on December 3, 2019, was an emergency, and while there is no doubt it was indeed a serious and severe matter, the physician's letter filed in support of Defendant's Motion does not describe the matter as an emergency or provide any information as to what may have precluded Defendant or someone on his behalf from contacting the Court via phone or through some other means the day preceding the hearing when the surgery took place, or prior to the hearing on the morning of December 4, 2019—much less why Defendant was unable to or did not inform the Court of such an alleged emergency immediately following the final date of the hearing. Given Defendant's unexplained absence from the first date of the final hearing, the delay in the proceedings for reasons reasonably attributable to him or to persons acting for him, and the dilatory nature of noting any form of emergency situation, the Court is not convinced that sufficient basis exists to alter, amend, or enter a new judgment, or that Defendant lacked reasonable opportunity to present his case or evidence.

The undersigned's own record of these cases includes a memorandum of Defendant's December 4, 2019, voicemail message. He missed the "mediation" and could be there in an hour if he could reschedule. He said nothing about his wife's surgery. A copy of that memorandum is submitted with this Order as Court Exhibit 1. The undersigned's record of these cases also includes a memorandum of a telephone conference with Attorney Jeffrey T. Spell on December 11, 2019. Defendant had contacted him. The undersigned directed him to contact Attorney Shepherd. Attorney Spell said nothing about any surgery. A copy of the memorandum of that telephone

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

conversation is submitted with this Order as Court Exhibit 2. Apparently, as of December 4 and December 11, Defendant's wife's surgery was not an issue that concerned him relative to the December 4 hearing.

2. Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). A court may relieve a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), SCRCP. In determining whether a judgment should be set aside under Rule 60(b)(1), "[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant." *N.H. Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct.App.1993) (*quoting Harry M. Lightsey & James F. Flanagan*, South Carolina Civil Procedure 82 (1985)).

Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *In re Vora,* 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). For the reasons stated above, and in reiteration of the same, given: (1) the Defendant's unexplained absence from the first date of the final hearing whereat he could have presented evidence and for which he had adequate notice, adequate opportunity to appear, the right to introduce evidence, and to confront the Plaintiff; (2) the delay in completing the proceedings for reasons reasonably attributable to him or to persons acting for him; and (3) the dilatory nature of noting any form of emergency situation—together with the lack of evidence as to why a continuance could not otherwise be requested or simple notice given to the Court prior to the final date of hearing or immediately thereafter—the Court is not convinced that sufficient or credible basis exists to set aside the judgment for excusable neglect, or that Defendant did not have adequate opportunity to be present and heard, or to otherwise avail himself of such opportunity had he acted with diligence.

For the foregoing reasons, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Set Aside Judgment is **DENIED.**

IT IS SO ORDERED!

Honorable Patrick R. Watts
Special Referee

Summerville, South Carolina
October 3, 2020

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

12/4/19

PC| Mr. Gibbs

843-343-3954

* he ~~would~~ missed medicine.
* he can ~~be~~ be here in an hour if he can reschedule.

ELECTRONICALLY FILED - 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

EXHIBIT 1
PENGAD 800-631-6989

ELECTRONICALLY FILED – 2020 Oct 07 12:50 PM - COLLETON - COMMON PLEAS - CASE#2015CP1500454

12/11/1

PH Jeff Spell

843-452-3553

he contacted by Henderson Ambs

He to contact Andy Shepherd for copy of proposed order

EXHIBIT 2
PENGAD 800-631-6989

Yvonne Franklin

From: pat.watts@wattslawfirmpa.com
Sent: Wednesday, November 4, 2020 3:48 PM
To: Yvonne Franklin
Subject: Hearing Notes 4/22/19 and 12/4/19
Attachments: Hearing Notes 12.4.19.pdf; Hearing Notes 4.22.19.pdf

Yvonne,

Here are the hearing notes from the other two hearings. We do not have a transcript.

Thank you,

Shelly F. Davis
Legal Assistant
Watts Law Firm, PA
P.O. Box 2046 (29484)
133 East 1st North Street, Suite 6
Summerville, South Carolina 29483
1.843.851.7050 (office)
1.843.851.7059 (fax)

PRIVILEGED AND CONFIDENTIAL: This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at 843-851-7050 or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

DEBT COLLECTOR: This firm collects debts for lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

15- 454 & 707

4/22/19 CT

Andrew Shepherd π atty
John Murry Hibbs π
Betty Hibbs π wife
Henderson Δ not here
Has been notified
Samuel Hibbs ~~dec~~ John's son
1998 deed to π & Δ by father

Clements Pinckney appointed
Real property
Bill Ford appraiser
Henderson prevented appraiser
Appoint Bill Ford by court

John M Hibbs under oath
Henderson his brother
Sanitizes deeds from father
to him & his brothers

over

4

205 ~~Murray~~ Maple
2000 ☐ house
he born there
2 sisters
he there last in 1999
before father died
about an acre
no ho
Jason Hill = Henderson's son
has a renter in there
"They" wouldn't allow him on property
Henderson's taxes
~~proper~~ They kept prop
don't give him money
can't be divided
no idea about tax status
~~Can't~~ Doesn't know value
Town is condemning frontage
to widen Maple Street

— 1 plan 4 feet 2d piece 1998
Pidgeon Bay Rd
¼ acre with house
he paid taxes till 2004
Jason had it rented out
rent while pops paid taxes

3/ rented as a residence
and as a bar / club
they wouldn't let him on the
property
He's got nothing
They've asked him for nothing
No idea about worth
No idea now what's going on
in property

Identifies 306 property Colleton
rural area
D/W trailer gone
② 2 years ago
he paid taxes after father died
Lady living there
wouldn't let him on property
② I care t
D/W bot 1996-97
father used it as a getaway
Disposal pays taxes 2006
received no rent
made no payments
doesn't believe it can be
subdivided

OVER

4/

Wants the home where
he was born

They can have Pidgeon Key
& collection city

home in horrible condition
agent or anyone -
heard disease
lung disease
diabetes
can
now lives in New York
came back monthly to visit
property
Jason would talk to him
has had appointment w/ brother
for a long time
Since Henderson was realtor
Henderson would not give John ½
father's estate
Henderson

wants home he was born in
All he wants is the
big home

5/ consider the income
it received
as offset in interest

deeds dated 1997
10

paid taxes till 2006
that's when it & j wouldn't
allow on property
~~for~~ wouldn't give him
money wouldn't ask for money

Answers are general denial
no counter claim

∴ Shepherd to do order

Appt Ford as appraiser
fig wc out rent
adjust values due each
award 205 n Maple to John 1st
then sell a piece

12/4/19 CT

15 454 & 707

Andrew Shepherd π atty
Jeffrey ~~John Murray~~ Hobbs π son
Betty Hobbs GDPOA π spouse
Samuel ~~Hobbs~~ ~~&~~ son
Cooper III. GDPOA
Henderson Hobbs Δ no show

Nov 13 Notice of Hearing sent to Henderson
Henderson called his office & acknowledged receipt of Notice

4/22/19 John testified
&

Samuel Daniel Cooper III
John is step father
by marriage to Betty his mother
acknowledges POA πE 1
familiar with case
Re: Maple Street 205
identifies deed to John & Henderson
deed πE 2

2/

House is occupied
Re's spoken to residents
both past & present
about 1/3 acre
3 structures
House - residence
mobile Home - residence
garage - storage

father & Henderson do not occupy
occupants are renters
House - 3 ~~people~~ tenants
total of 9 living there
MoHo - 2 tenants

rent = $150 per week
John has never received any rent
since death of his father Sr
Since 2006 Re under Fords
property been rented
Jason Henderson Hibbs manages
property
Jason = son of Henderson
property leased like this for
18 or 20 years
at least 5 tenants

3/ $5 x 150 / week x 10 years =
$390,000
390 ÷ 2 = $195,000
John owed at least $195,000

TES identifies appraisal of 205 Maple
11/22/2019 by William Ford
$140,000 + 141,093
identifies photo of house on appraisal
House needs extensive repairs
5 rooms + Ba
2000 SF
Mom is owned by both John & Henderson
cannot be divided in kind
doesn't want to sell
John wants to take title to whole
John's total share value - $70,000

identifies ~~appraisal~~ deed of Pidgeon Roost Rd
Founder with prop 187
Has inspected House
main House
shed
type of shed for congregations

Neither John nor Henderson occupy
occupied by tenants

4

rent = $800/mo
rented 8 years
John gets nothing
Jason gets rent
doesn't know what he does with money
shed = 20 x 20 screened in
on all sides
used for "hang out" - gambling
John tried to visit - denied
access
lot = ¼ acre
can't be physically divided
can't be used for other than residential
John doesn't intend to do that
John objects to gambling

1st appraisal dated 11/22/2019
140,000 + 43,841
agrees with this appraisal
no objection to value
John wants to get full title
based upon denial of release
wants 205 that way too
doesn't know exactly how much
rent collected
agrees John received none

5/

PEC

10's spread sheet of expenses
tax receipts Dor Cnty
tax receipts Dor Cty
tax receipts Colleton
separate records of expenses
all these provided by Henderson
based upon T requests for production
total expenses = 107,305.96
is what Hend alleged he spent
1/2 of 107 = 53,652.63
= John's share of expenses

PEC relates to all expenses for
all three properties
gross rent - expenses = net to John $141,347.71
at least
John wants judgment of 141,347.71
will stick w/only 10 years of
records

TES

Re Colleton Cnty - 119 Camp Buddy
old dwd
@ 2 acres
no house now
just shed garage

6

AO was used as rental
by Hend & Jason
who disappeared
John received no rental
John attempted to enter
denied access
CDS appraisal 11/23/2019
$25,650
agrees & approves this value
* John wants Henderson to have
→ full title to this property
John wants full title to both
Dot Culy properties

mc net to John = 141
1/2 205 70 } 140
1/2 118 70 }

satisfaction of judgment:
give all of Dot Culy mort
to John
give Henderson Coll Culy prop

7

needs injunction against
Hen t Jason from
entering DOR cabs property

give Hen & Jason ~~30~~ 14 days
to remove their personal property
not affixed

Shepherd to prep order
& decree

John Kornegay

Subject: FW: Notes from Hearing - Gibbs v. Gibbs
Attachments: SKM_C22720110213590.pdf

From: pat.watts@wattslawfirmpa.com <pat.watts@wattslawfirmpa.com>
Sent: Monday, November 2, 2020 11:57 AM
To: Yvonne Franklin <civlit@shelbournelaw.com>
Subject: Notes from Hearing - Gibbs v. Gibbs

Yvonne,

Here are Mr. Watts' notes from the hearing. There are no audio or video recordings.

Thank you,

Shelly F. Davis
Legal Assistant
Watts Law Firm, PA
P.O. Box 2046 (29484)
133 East 1st North Street, Suite 6
Summerville, South Carolina 29483
1.843.851.7050 (office)
1.843.851.7059 (fax)

PRIVILEGED AND CONFIDENTIAL: This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at 843-851-7050 or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

DEBT COLLECTOR: This firm collects debts for lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

8/27/20 CT

Δ M+ to Set Aside

John Kornegay Δ atty

Andrew Shepherd Π atty

Henderson Gibbs for Π

Kornegay
12/4/19
12/3 emergency heart surgery

Hx couldn't come to court

attempted to contact court on trial date
59
co(6)

wants new hearing
absence negligent

Hx would testify
~~to conduct~~
about rental repairs etc

2/

Shepherd

~~Cataly~~
pending 5 yrs
Scheduled several times
△

Dr Stuart doesn't say
"emergency"
pre-planned says MA.

Hearing 4th
no request to recovered
until now ~~yr later~~ 2 mos

repairs needed
large stack
produced by △
pursuant to discovery

needs profits derived
by TI misappropriation
into Maple

3/ wait to properly interviews

Kornegay

new to case
bulk of contriances were by H

MS & in Rockies
disputed weekly contacts
over 10 years

no need to involve Snell
Andy file motion
to be returned after

H & Reed Snell to file something
wait till final order issued.

Andy got message from

Shep wants denied

OVER

4

Motion denied

H.A new of hearing
contacted court
contacted a lawyer
nothing Represented
while order enrolled
Step to P order

RECEIVED
May 17 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY AND DORCHESTER COUNTY

Court of Common Pleas

Patrick R. Watts, Special Referee

Appellate Case No. 2020-001489

John Murray Gibbs, ……. Respondent,

vs.

Henderson Gibbs, Jr, ……. Appellant.

CERTIFICATION OF COUNSEL

Pursuant to Rule 210(g), of the South Carolina Appellate Court Rules, the undersigned, attorney in this matter for the Appellant, certifies that this Record on Appeal includes all matters proposed to be included by the parties and not any other material.

SHELBOURNE LAW

s/John T. Kornegay

P. Brandt Shelbourne, Esq. (#15143)
John T. Kornegay, Esq. (#102294)
131 E. Richardson Avenue
Summerville, SC 29483
843.871.2210 (ph)
843.875.2224(f)
Counsel for Appellant

April 27, 2021