

# Austin & Rogers, P.A.

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April 10, 2013

**VIA, HAND-DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

- Re: • H. Marshall Hoyler v. The State of South Carolina, et. al.  
• Appellate Case No.: 2013-000647  
• **Deputy Clerk's Correspondence dated April 5, 2013**

Dear Ms. Kitchings:

In response to Ms. V. Claire Allen's correspondence of April 5, 2013, received in this office on April 8, 2013, (copy enclosed for your ready reference), we offer the following.

Ms. Allen requested that we provide a copy of an Order from the lower Court with a, "...complete caption for this matter." The caption shown on the copy of the Order we provided with our Notice of Appeal is correct and the latest Order issued by the lower Court.

The last Order issued by the lower Court indicated in the body of that Order that, additional parties were being added and based on that, we included them in the caption of our Notice of Appeal. Unfortunately, the caption of the Order itself was not updated, but was shortened to, "...et. al..." Also, we were instructed to send you a copy of the previous substantive Order issued by the lower Court, and that is enclosed herein.

Please advise of how you would like us to proceed. If you have any questions or concerns, please do not hesitate to contact the undersigned.

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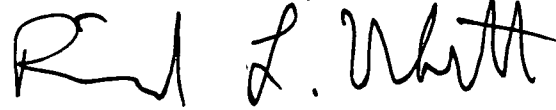
**SC Court of Appeals**

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Respectfully Submitted,  
**AUSTIN & ROGERS, P.A.**

A handwritten signature in black ink, appearing to read "Richard L. Whitt". The signature is written in a cursive style with a large initial "R" and "W".

Jefferson D. Griffith, III  
Richard L. Whitt

Enclosure

cc: J. Emory Smith, Jr., Esquire  
Mary D. Shahid, Esquire  
Alysoun M. Eversole, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

H. MARSHALL HOYLER,

Plaintiff,

vs.

THE STATE OF SOUTH CAROLINA,

Defendant,

MERRY LAND PROPERTIES, LLC,

Defendant/Intervenor.

IN THE COURT OF COMMON PLEAS

CASE NO.:2007-CP-07-3212

**ORDER FOR JOINDER OF PARTIES**

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**SC Court of Appeals**

11 MAR 17 AM 10:40  
JERRI ANN ROSE  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

This matter came before me on January 31, 2011, for hearing on the merits of this a non-jury action brought by Plaintiff in accordance with S. C. Code Sec. 48-39-220 to determine Plaintiff's legal interest in tidelands situate adjacent to the Beaufort River, Port Royal, Beaufort County, S. C.

**BACKGROUND**

Plaintiff claims fee simple ownership of a parcel of land located between the mean high water and mean low water marks of the Beaufort River, consisting of approximately 90 acres of lands below mean high water. Plaintiff's claim of ownership allegedly originates with a Grant from the State of South Carolina to Plaintiff's predecessor in title, J. M. Crofut, dated July, 1891, for "95.27 acres of Marsh Land on Beaufort River near the Town of Beaufort."

"The State of South Carolina holds presumptive title to all tidelands within its borders, which are held in trust for the benefit of the public. See *Coburg Dairy, Inc. v. Lesser*, 318 S. C. 510, 458 S. E. 2d 547 (1995); *Hobonney Club, Inc. v. McEachern*, 272 S. C. 392, 252 S.E. 2d

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**SC Court of Appeals**

133 (1979). The State may, however, grant private individuals an ownership interest in tidelands. ... A grant from the State purporting to vest title to tidelands in a private party is construed strictly in favor of the government and against the grantee. See *State v. Pacific Guano, Co.*, 22 S. C. 50 (1884).” Lowcountry Open Land Trust v. State and James A. Atkins, 347 S. C. 96, 102-103, 552 S. E. 2d 778, 781-782 (2001).

S. C. Code Sec. 48-39-220 provides a statutory remedy to apply the legal presumptions set forth above and to determine the validity of claims of ownership of tidelands. Actions pursuant to this Section are brought against the State of South Carolina. Here, Merry Land Properties, LLC, (“Merry Land”) intervened based on ownership of upland parcels that abut the marshes of the Beaufort River. Merry Land is in possession of State and Federal permits authorizing construction of a community marina over and through the marsh property claimed by Plaintiff. These permits were obtained prior to Merry Land learning of Plaintiff’s claim of ownership of the marshes abutting the Beaufort River.

**THE INTERESTS OF JUSTICE ARE SERVED BY PERMISSIVE JOINDER**

At the commencement of the hearing, the parties apprised the Court of the existence of a survey, prepared by Plaintiff’s surveyor, which purportedly re-creates the boundaries of the State Grant. That survey revealed the existence of 32 parcels, including the two parcels owned by Merry Land, that abut the marsh parcel that Plaintiff claims. Plaintiff’s surveyor has identified the owner of each of the parcels abutting the marsh parcel. In addition, the survey revealed the existence of three docks, constructed by abutting property owners whose interests in waterfront access may be affected. Plaintiff’s counsel reported that Plaintiff was unaware of these possible encroachments until he obtained this survey.

Following this discussion, this Court terminated the hearing and discussed with the parties the Court's belief as to the necessity of joining the property owners of the 30 parcels, in addition to the parcels owned by Merry Land, that abut the property that is the subject of this action. It would appear, in accordance with SCRPC Rule 20, that these property owners "may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action."

Here, should this Court declare that the State Grant to J. M. Crofut, Plaintiff's predecessor in title, is a valid conveyance of tidelands in accordance with the applicable case law and legal standards, then the property owned by Merry Land, and Merry Land's ability to construct a community marina, will not be the only property and property rights impacted by the Court's decision. At a minimum, it is possible that the seaward boundary of the 30 additional parcels could change as a result of Plaintiff's re-creation of the boundaries of the Crofut Grant. But, of even greater significance, the owners of the 30 additional parcels could face actions for trespass, based on the construction of docks, or could lose the right of access to the Beaufort River upon a declaration that the Crofut Grant is valid.

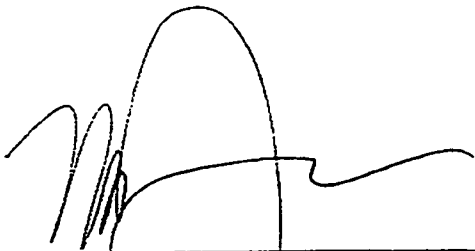
Therefore, this Court finds that all property owners abutting the marsh acreage that is the subject of this action shall be joined as Defendants in this action, and shall be served with copies of the Summons and Complaint in this action. To expedite this, the Court attaches as Exhibit "A" to this Order a chart prepared by Merry Land's counsel which identifies all abutting owners and provides contact information for these property owners.

CONCLUSION

It is, therefore, ORDERED, that the parties identified on Exhibit "A" who have not already intervened in this action or been named as parties to this action shall be served a copy of the Summons and Complaint in this civil action, and joined in this action in accordance with SCRPC Rule 20. Such service of process shall be undertaken by Plaintiff, and shall be accomplished within sixty days of the date of this Order.

It is further ORDERED that the trial in this civil action shall recommence after all property owners identified in Exhibit A have been served with the pleadings, and have had an opportunity to respond to the pleadings. Provided, however, that hearing in this matter shall not reconvene before August 1, 2011, unless all parties are in agreement regarding reconvening before August 1, 2011.

AND IT IS SO ORDERED.

  
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MARVIN H. DUKES, III  
MASTER-IN-EQUITY  
BEAUFORT COUNTY

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