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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Civil Action No. 2007-CP-07-3212
Appellate Case No. 2013-000647

H. Marshall Hoyler.....Appellant,

v.

The State of South Carolina
Merry Land Properties, LLC and
Nancy Deering Carey.....Respondents.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT LACK SUBJECT MATTER JURISDICTION TO ADD ADDITIONAL DEFENDANTS, BECAUSE THE APPELLANT'S ACTION WAS BROUGHT PURSUANT TO *SECTION 48-39-220, S.C. CODE ANN., (1976, AS AMENDED)*?
- II. DID THE LOWER COURT ERR IN ADDING DEFENDANTS, BECAUSE NO JUSTICIABLE CONTROVERSY EXISTS BETWEEN THE APPELLANT AND THE CLASS OF DEFENDANTS PROPOSED TO BE ADDED BY THE LOWER COURT, OTHER THAN THE STATE OF SOUTH CAROLINA?
- III. DID THE LOWER COURT ERR IN FINDING THAT THE APPELLANT HAS STANDING TO ASSERT CLAIMS AGAINST ADDITIONAL DEFENDANTS?
- IV. DID THE LOWER COURT ERR IN FAILING TO FOLLOW RULE 17(B), RULE 19 AND RULE 20(a) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

STATEMENT OF THE CASE

Appellant is putative titleholder to certain real property lying between the high tide and low tide lines along the Beaufort River in Beaufort County. On November 8, 2007, Appellant filed a legal action against the State of South Carolina to determine whether Appellant's title was superior to that of the State of South Carolina's title, pursuant to the statutorily mandated obligations contained in *Section 48-39-220, S.C. Code, Ann., (1976, as amended), (Complaint, R. ____)*.

On November 26, 2011, Respondent Merry Land Properties, (hereinafter as, "Merry Land") (i) moved to intervene in the action (ii) responded to the action and (iii) interjected counterclaims, claiming only that Merry Land had permits to use the marshland, (*Motion to Intervene, R. ____*). In response, Appellant filed a Motion to Dismiss the Intervention/Counterclaims on December 26, 2011, citing various subsections of Rule 12, South Carolina Rules of Civil Procedure, (*Motion to Dismiss, R. ____*).

Later, Appellant consented to the Intervention of Merry Land, while reserving all of his rights to his claims and defenses, and the lower Court ordered the intervention.

Appellant later filed a Reply to the Counterclaim of the Respondent, Merry Land on February 8, 2012, (*Reply, R. ____*).

STATEMENT OF THE CASE, (Cont.)

January 31, 2011, Hearing.

After a thorough discovery process, a first Hearing was held on January 31, 2011, before the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County, (2011, *Hearing Tr. p. 1; R. ___*). At that Hearing, Appellant moved to dismiss the Respondent Merry Land from this action, for lack of subject matter jurisdiction, which was denied by the lower Court, (2011, *Hearing Tr. p. 15, Line 23-p. 16, Line 2; R. ___*). At the Hearing, Appellant moved for Summary Judgment and the ruling on that Motion was postponed while Appellant presented his case, (2011, *Hearing Tr. p. 5, Line 1-p. 6, Line 6; R. ___*).

Also, at the Hearing, and after the completion of the presentation of an expert witness, on behalf of the Appellant, (2011, *Hearing Tr. p. 19, Lines 13-14; R. ___*), the lower Court, *sua sponte*, ordered the Appellant to add as parties, all of the highland property owners that abutted Appellant's marshland property, approximately thirty-two additional Defendants, (2011, *Hearing Tr. p. 54, Lines 6-15; R. ___*).

Thereafter, the lower Court issued its written Order confirming the lower Court's earlier, oral Order of March 21, 2011, (*Order for Joinder of Parties, R. ___*). Respondent Nancy Deering Carey filed her Motion to Intervene on April 4, 2011, (*Motion to Intervene, R. ___*). The Appellant, in a timely manner, filed a Motion to Reconsider on April 8, 2011, (*Motion to Reconsider, R. ___*). Respondent Merry Land filed its Return dated April 15, 2011, (*Return to Motion to Reconsider, R. ___*). Thereafter, Appellant filed his Notice of Appeal on April 21, 2011, (*Notice of Appeal, R. ___*), with the South Carolina Court of Appeals, and an amended Notice of Appeal, on July 29, 2011, (*Amended Notice of Appeal, R. ___*).

STATEMENT OF THE CASE, (Cont.)

After the Notice of Appeal was filed, the Court of Appeals contacted the parties, on July 12, 2011, and requested that each party provide the Court with a Memorandum addressing the issue of appealability, (*Correspondence from the Court of Appeals, R. ____*). The Parties complied with that correspondence, (*Appellant's Memorandum in Support of Appeal, R. ____*); (*Respondent Merry Land's Memorandum Opposing Appealability, R. ____*). Thereafter, the South Carolina Court of Appeals issued its Order, filed September 26, 2011, finding that the underlying Order was not appealable, (*Order, R. ____*).

Thereafter, Appellant filed his Petition for Rehearing with the South Carolina Court of Appeals on October 7, 2011, (*Appellant's Petition for Rehearing, R. ____*). The South Carolina Court of Appeals issued its Order denying rehearing, which was filed on November 17, 2011, (accordingly, there was no Record on Appeal presented to the South Carolina Court of Appeals); (*Order, R. ____*).

The Appellant then filed a timely Petition for a Writ of Certiorari on December 14, 2011, with the South Carolina Supreme Court, (*Petition for Writ of Certiorari, R. ____*). Respondent Merry Land then filed its Return to Petition for Writ of Certiorari, dated January 3, 2012, (*Return to Petition, R. ____*). Appellant filed his Reply to Respondents' Return on January 19, 2012, (*Reply, R. ____*). The Supreme Court of South Carolina denied Appellant's Petition for Writ of Certiorari, by way of Order dated December 20, 2012, (*Supreme Court Order, R. ____*). This matter was then remitted to the lower Court by way of Remittitur dated January 15, 2013, (*Remittitur, R. ____*).

STATEMENT OF THE CASE, (Cont.)

February 14, 2013 Hearing.

Appellant then returned to the lower Court where Appellant's previously pending Motion to Reconsider and Respondent Nancy Deering Carey's Motion to Intervene were heard by the lower Court in a second Hearing on February 14, 2013, (*Motion to Reconsider, R. ___*); (*Motion to Intervene, R. ___*). The lower Court issued its Order, filed February 15, 2013, denying Appellant's Motion to Reconsider, and adding an additional Defendant, which Order was received by Appellant's counsel on February 18, 2013, (*Order, R. ___*). Appellant then filed his Notice of Appeal, for this Appeal, on March 15, 2013, (*Notice of Appeal, R. ___*). This Appeal follows:

STATEMENT OF FACTS

Appellant is putative titleholder to certain real property lying between the high tide and low tide lines along the Beaufort River in Beaufort County.

Respondent State of South Carolina includes its, political subdivisions, agents and officials. Respondent State of South Carolina, through the S.C. State Budget and Control Board, holds title to certain real properties as assets of the Respondent State of South Carolina. In accordance with Chapter 11 of Title 1 of the S.C. Code of Laws, the Respondent State of South Carolina, through the State Budget and Control Board, can acquire, encumber, transfer and lease real property in the name of the Respondent State of South Carolina.

Appellant, is the putative owner of fee simple title to ninety-five acres, more or less, located in Beaufort County South Carolina along the Beaufort River, (hereinafter as, “The Property”). The property includes areas described as marshlands, or property below the mean high water mark.

The Property is the identical conveyance of real property to J.M. Crofut, from the Honorable Benjamin R. Tillman, Governor of South Carolina, dated July 27, 1891, and was for approximately ninety-five acres of marshland described as being located on the Beaufort River, (hereinafter as, “Deed”).

The Deed is accompanied by a plat which depicts a tract of lands containing approximately ninety-five acres, near the Town of Beaufort, bounded on the South by lands of Moss, on the West by miscellaneous individuals, on the North by Seal Island Chemical Works and on the East by the Beaufort River.

STATEMENT OF FACTS, (Cont.)

Appellant demonstrated an unbroken chain of title to the Property at the trial, which is identical to the Property encompassed in the Deed allowing for erosion and accretion over the period of time the Appellant's predecessors in interest have held it. Appellant demonstrated alienation of the Property from the State of South Carolina, based on the Deed. A plat accompanies the Deed, and depicts the Property. Title to these tidelands has not reverted back into the State of South Carolina.

On November 8, 2007, Appellant filed a legal action against the State of South Carolina to determine whether Appellant's title was superior to that of the State of South Carolina's title, pursuant to the statutorily mandated obligations contained in *Section 48-39-220, SC Code, Ann., (1976, as amended), (Complaint, R. _____)*.

The Respondents discussed in the Statement of the Case, thereafter Intervened

At the Hearing on January 31, 2011, and after the completion of the presentation of one witness, the lower Court, *sua sponte*, ordered the Appellant to add, as parties, all of the highland property owners that abutted Appellant's marshland property, approximately thirty-two additional Defendants, *(2011, Hearing Tr. p. 54, Lines 6-15; R. _____)*.

ARGUMENT

Summary of Argument

The lower Court lacked subject matter jurisdiction to add additional Defendants, because the Appellant's action was brought pursuant to *Section 48-39-220, S.C. Code Ann. (1976, as amended)*. This Statute contemplates an action against the State of South Carolina, and no other party. In order to determine the ownership of tideland, as between the State of South Carolina and an individual or corporate claimant, the State of South Carolina has established a specific statutory procedure which is set forth in *Section 48-39-220*.

Once the South Carolina General Assembly has established a statutory scheme, a lower Court lacks subject matter jurisdiction to fashion a remedy outside the clear parameters of a specific Statute such as *Section 48-39-220*. *Byrd v. Irmo High School*, 468 SE 2d 861 (1996), stated that “[w]here a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied.” Citing, *Trayco, Inc. v. United States*, 994 F.2d 832 (Fed.Cir.1993), *Byrd supra* at 865. Therefore, the lower Court cannot arbitrarily add Defendants beyond those anticipated under *Section 48-39-220*.

ARGUMENT

I. THE LOWER COURT LACKED SUBJECT MATTER JURISDICTION TO ADD ADDITIONAL DEFENDANTS, BECAUSE THE APPELLANT'S ACTION WAS BROUGHT PURSUANT TO SECTION 48-39-220, S.C. CODE ANN., (1976, AS AMENDED).

Appellant's action was brought pursuant to *Section 48-39-220, S.C. Code Ann., (1976, as amended)*, which reads in pertinent part,

“(A) **Any person claiming an interest in tidelands** which, for the purpose of this section, means all lands except beaches in the Coastal zone between the mean high-water mark and the mean low-water mark of navigable waters without regard to the degree of salinity of such waters, **may institute an action against the State of South Carolina for the purpose of determining the existence of any right, title or interest of such person in and to such tidelands as against the State.** Service of process shall be made upon the secretary of the State Budget and Control Board.”, (emphasis not in original).

A fair reading of this Statute reveals that it contemplates an action against the State of South Carolina and no other party, for the reason that the State of South Carolina has presumptive title to the tidelands of this State. McQueen v. South Carolina Coastal Council, 354 S.C. 142, 580 SE 2d 116 (2003). None of the Defendants the lower Court proposes to add, based on the evidence before the Court showing Appellant's chain of title, may claim any ownership in the tideland adjacent to their respective property. The Appellant owns the tideland in question through a Grant from the State of South Carolina, (2011, *Hearing Tr. p. 22 Line 14- p. 23, Line 5.; R. _____*).

ARGUMENT, (Cont.)

SECTION 48-39-220.

In order to determine the ownership of tideland, as between the State of South Carolina and an individual or corporate claimant, the State of South Carolina has established a specific statutory procedure which is set forth in *Section 48-39-220, S.C. Code Ann., (1976, as amended)*.

No member of the class of Defendants the lower Court has proposed to add has any claim to the tidelands which abut their upland property and therefore they are not contemplated as parties in the Statute described hereinabove. *Section 48-39-220*, is very clear on the parties who are to participate in this legal action.

The general rule of statutory construction is that a specific statute prevails over a more general one. *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div.* 462 S.E.2d 858 (1995). The South Carolina Supreme Court clarified that proposition as follows, “Thus, ... **the Legislature fashioned a statutory scheme that specifically outlined the procedures for handling** student disciplinary **matters**. Therefore, the circuit court's ruling that it lacked subject matter jurisdiction to hear the matter is correct.” (emphasis not in original) *Byrd v. Irmo High School*, 468 SE 2d 861 (1996).

Under the circumstances presented in the case, *sub judice*, the Legislature **fashioned a statutory scheme that specifically outlined the procedures for handling (title to tidelands) matters.** Additionally, the *Byrd* decision stated that “[w]here a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied.” Citing, *Trayco, Inc. v. United States*, 994 F.2d 832 (Fed.Cir.1993), *Byrd supra* at 865. The Lower Court, by its Order, is trying to impose additional requirements on the Appellant by implication.

ARGUMENT, (Cont.)

The Lower Court's Interpretation of a Statute.

The primary purpose of a Court in interpreting a Statute is to determine the intent of the legislature and in order to do so it must give the language of the Statute its plain and ordinary meaning. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature". Sloan v. Hardee, 640 S.E.2d 457, 459 (2007). "As such, a court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, **courts should not resort to subtle or forced construction to limit or expand the statute's operation.**" (emphasis supplied) State v. Jacobs, 713 S.E.2d 621, 622 (2011) (internal citations omitted). But, "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 533 S.E.2d 578, 581 (2000); Grimsley v. SC Law Enforcement Div., 396 S.C. 276, 721 SE 2d 423 (2012).

Under the facts alleged by the Appellant, the only Defendant required, and in fact allowed by the Statue, is the State of South Carolina. The Legislature has made the determination of the necessary parties to an action filed under *Section 48-39-220*, and the lower Court cannot exceed those parameters.

Therefore, having been given a specific Statute from which it is to determine title to tidelands property, the lower Court may not exceed that specific legislatively established statutory authority, in order to add additional Defendants, who have no interest in the outcome of title to tidelands property, because they have no claim of ownership.

ARGUMENT, (Cont.)

II. THE LOWER COURT ERRED IN ADDING DEFENDANTS, BECAUSE NO JUSTICIABLE CONTROVERSY EXISTS BETWEEN THE APPELLANT AND THE CLASS OF DEFENDANTS PROPOSED TO BE ADDED BY THE LOWER COURT, OTHER THAN THE STATE OF SOUTH CAROLINA.

“Before any action can be maintained, a justiciable controversy must be present.

Byrd v. Irmo High School, 468 S.E.2d 861, 864 (1996). A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character. Waters v. South Carolina Land Res. Conservation Commn., 467 S.E.2d 913, 917-18 (1996); S. Bank and Trust Co. v. Harrison Sales Co., Inc., 328 S.E.2d 66, 67 (1985); Charleston County Sch. Dist. v. Thomas, 283 S.E.2d 441, 442 (1981); see also Graham v. State Farm Mut. Auto. Ins. Co., 459 S.E.2d 844, 845 (1995) (A justiciable controversy exists when (i) a concrete issue is present (ii) there is a definite assertion of legal rights and (iii) a positive legal duty which is denied by the adverse party.). The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. Holden v. Cribb, 561 S.E.2d 634, 637 (Ct. App. 2002). “Sloan v. Greenville County, 590 SE 2d 338 (S.C. Ct. of App. 2003).

No Concrete Issue Present.

In this case, there is (i) no concrete issue present (none of the Defendants proposed to be added by the lower Court, claim an interest in the tidelands and the Appellant claims no interest in any of the highland adjacent to the tidelands) (ii) there is no definite assertion of legal rights (none of the highland owners can come forward without a claim of title to the adjacent tidelands) and (iii) no positive legal duty denied by the adverse party (the Defendants proposed to be added by the lower Court, are persons which have no claim to the tideland, nor does the Appellant claim any portion of the adjacent highland).

ARGUMENT, (Cont.)

At any point in the future, if an adjacent highland owner were to come forward with a claim for the tideland property, none of the current proceedings would/could adversely affect that claim.

The Issue Perceived by the Lower Court is Moot.

Before any action can be maintained, a justiciable controversy must exist. Midland Guardian Co. v. Thacker, 314 S.E.2d 26 (Ct. App. 1984), cert. denied. A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co., 155 S.E.2d 618 (1967). This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. Jones v. Dillon-Marion Human Resources Dev. Comm'n, 291 S.E.2d 195 (1982). Mootness has been defined as follows: "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." Mathis v. South Carolina State Highway Dep't, 195 S.E.2d 713, 715 (1973).

Under the facts of this case, no controversy exists between the highland Defendants proposed to be added by the lower Court, and the Appellant. The Appellant only claims that portion of the tidelands which was deeded to the Appellant's predecessors in interest, by the State of South Carolina in the late 19th century, (*R. ___*). Based on these facts and the Appellant's thorough title examination and testimony regarding the title to the Property, only the Appellant may claim tideland, as against the State, up to the high water mark.

ARGUMENT, (Cont.)

The highland Defendants proposed to be added by the lower Court can only claim down to the high water mark and no further. A judgment which involves the rights of the highland property owners “will have no practical legal effect upon existing controversy...[and will] mak[e] it impossible for [the] reviewing Court to grant effectual relief . Mathis supra at 715.

This is true even though the high water mark may change by operation of wind and tide. Wherever the high water mark is at any given moment, is the boundary line between the highland Defendants proposed to be added as Defendants by the lower Court, and the Appellant or the State of South Carolina.

Therefore, there is no justiciable controversy as to any Defendant proposed to be added by the lower Court, other than the State of South Carolina, and there is no claim that can be maintained by the Appellant against any Defendant, except the State of South Carolina. Nor can there be any claim made against Appellant by any Defendant proposed to be added by the lower Court, except the State of South Carolina.

ARGUMENT, (Cont.)

III. THE LOWER COURT ERRED IN FINDING THAT THE APPELLANT HAS STANDING TO ASSERT CLAIMS AGAINST ADDITIONAL DEFENDANTS?

“A party seeking to establish standing must prove the "irreducible constitutional minimum of standing," which consists of three elements: (1) the plaintiff must have suffered an injury in fact; (2) the injury and the conduct complained of must be causally connected; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. Sea Pines Ass'n, 345 S.C. at 601, 550 S.E.2d at 291 (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)); see also Beaufort Realty Co., Inc. v. Beaufort County, 551 S.E.2d 588 (S.C. Ct. App. 2001) ("The United States Supreme Court has established the following requirements to show standing: (1) the plaintiff must suffer an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.".)” Sloan v. Greenville County, 590 SE 2d 338 (S.C. Ct. of App. 2003).

Elements of Standing.

As for the elements of standing, the Appellant (i) asserts no claim against the highland owners and has not been injured by them, in fact or otherwise, (ii) because there is no injury which can be traced to the highland Defendants proposed to be added by the lower Court and (iii) because there is no injury, there is no likelihood that an injury can be redressed by a favorable decision against the highland Defendants proposed to be added by the lower Court.

ARGUMENT, (Cont.)

The converse of this reasoning is true as well. Assuming that the highland Defendants proposed to be added by the lower Court, brought an action against the Appellant, or counterclaimed after having been wrongly sued by the Appellant, (absent a claim of a King's or State's grant by the highland Defendants proposed to be added by the lower Court), (i) there is no injury suffered by the highland Defendants proposed to be added by the lower Court (ii) that could be traced to the Appellant and (iii) which would be redressed by a favorable decision against the Appellant. The argument that the highland Defendants proposed to be added by the lower Court, will have to work with the Appellant to gain tidelands access for a dock (assuming Appellant is successful in his legal action against the State) does no damage to the highland Defendants proposed to be added by the lower Court because their position would be the same if they sought access from the State

This controversy is over tideland and like any property owner which abuts another, the decisions about what to do, or not do, on the adjacent property (absent a nuisance or other preexisting covenants or easements) is of no concern to the adjacent property owner. What the highland Defendants proposed to be added by the lower Court would essentially be claiming is a right of private condemnation to cross over the land of the Appellant. The highland Defendants proposed to be added by the lower Court, would have no right to do so on any other parcel of land in South Carolina and because the property to which the Appellant putatively holds title is inundated by tidal activity, on a regular basis, gives no such right to the highland Defendants proposed to be added by the lower Court.

ARGUMENT, (Cont.)

Therefore, neither Appellant, nor any Defendant proposed to be added by the lower Court, have standing to bring a claim against the other, and Appellant's original legal action was properly brought only against the State of South Carolina, in compliance with *Section 48-39-220, S.C. Code Ann., (1976, as amended), (R.____)*.

ARGUMENT, (Cont.)

IV. THE LOWER COURT ERRED IN FAILING TO FOLLOW RULE 17(B), RULE 19 AND RULE 20(a) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

Rule 17(b) SCRPC.

Rule 17(b) states: “Capacity to Sue or Be Sued. The capacity of a party to sue or be sued **shall be determined by the law of this State.**” (emphasis not in original). As stated above, the Statute under which Appellant brings this action specifically dictates the parties which may participate. The highland Defendants proposed to be added by the lower Court are not set forth in the Statute and therefore have no capacity to sue, or be sued. Because a specific Statute takes precedence over a general Statute, the capacity to sue, or to be sued, is set forth in the specific Statute, *Section 48-39-220* to the exclusion of all others.

Rule 19, SCRPC.

Rule 19, SCRPC, “(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.”

ARGUMENT, (Cont.)

The lower Court's action in proposing to add additional highland Defendants will deprive the lower Court of subject matter jurisdiction as set forth above. None of the highland Defendants proposed to be added by the lower Court, are necessary to avail the Appellant and the State of South Carolina of complete relief under Subsection 1.

None of the additional Defendants proposed to be added by the lower Court has an interest in the tidelands and if one comes forward at a later date, that claim will not be foreclosed by the outcome of this legal action under Subsection 2(i). Neither the State, nor the Appellant, will be subject to double, multiple or inconsistent obligations by reason of its or his claimed interest pursuant to Subsection 2(ii).

Rule 20(a), SCRCP.

Rule 20(a) SCRCP (Permissive Joinder), doesn't apply: "All persons **may** join in one action as plaintiffs if (1) they **assert any right to relief** jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences **and** (2) if any question of law or fact common to all these persons will arise in the action." (emphasis supplied).

Rule 20(a), also gives guidance as follows. "All persons 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."

ARGUMENT, (Cont.)

Rule 20(a) doesn't apply because there is no transaction, occurrence, or series of transactions or occurrences which a common question of law or fact. Highland owners and tideland owners have a common, dynamic border. That is not in dispute in this action. Regardless of the outcome of this action the boundary will remain the same between the highland and tideland property owners. The only dispute in this legal action is who owns the tidelands and none of the highland owners (the Defendants, proposed to be added by the lower Court) have any stake in its outcome.

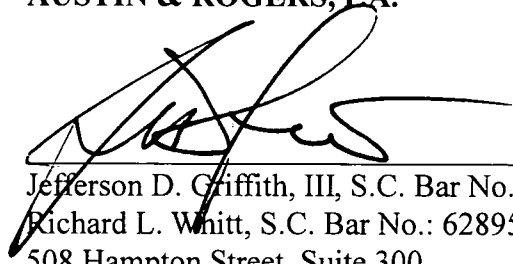
CONCLUSION

Based on the foregoing, applicable Statutes and applicable South Carolina case law, this Court should reverse the Orders of the lower Court and hold that additional Defendants should not be added to this action, and this action should proceed as being between the Appellant and the Respondent State of South Carolina.

[Signature Page Follows]

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