STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
Coffin Point Plantation Homeowners Association, Inc.,	)	C/A No. 2018CP0702109
Plaintiff,	)	**ORDER GRANTING PARTIAL SUMMARY JUDGMENT**
vs.	)	
State of South Carolina, *et al.*,	)	
Defendants.	)	

Before this Court are Motions for Summary Judgment made by the State of South Carolina and Scott Hersh. The Court initially heard the motions by WebEx on December 22, 2021. During that hearing, the Court requested briefing on the question of whether S.C. Code Ann. § 48-39-220 applies to beaches. Following filings by some of the parties on this question, the Court heard arguments on the question by conference call on January 6.

After considering all of the parties' filings and the arguments at the above hearing and for the reasons discussed below, this Court grants summary judgment for the defendants in this case to the extent that the property at issue is beach. As to any portion of the claim that is not beach, summary judgment is denied.

BACKGROUND

This suit was brought by Plaintiff Coffin Point Plantation Property Owners Association, Inc., to quiet title to 50.13 acres of "marsh land between the high and low water mark on St. Helena Island" granted by the State to Charles H. Lyman in 1891. Coffin Point initially named the State and several other defendants. By Order dated July 17, 2019, this Court directed Plaintiff to make more definite and certain the Complaint and to name all adjacent landowners and parties who have

a permitted dock, pier, wharf or other structure in, or crossing the property in question." Before this Court now is Plaintiff's Second Amended Complaint.

"Our State's tidelands are a precious public resource held in trust for the people of South Carolina." *Hoyler v. State,* 428 S.C. 279, 291, 833 S.E.2d 845, 852 (Ct.App. 2019), reh'g denied (Oct. 17, 2019), cert. dismissed (Jan. 29, 2020)). Title to lands lying between the mean high water mark and mean low water mark is held by the State in trust for public purposes absent a grant from the State or the King of England. *See Hobonny Club v. McEachern*, 272 S.C. 392, 252 S.E. 2d 133 (1979). The burden rests upon the claimants to prove that the State had granted title to the lands in question to them or their predecessors in title. *State v. Yelsen Land Co.*, 265 S.C. 78, 216 S.E. 2d 876 (1975). "[O]ne claiming an interest in tidelands pursuant to section 48-39-220(A) must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed." *Hoyler v. State*, 428 S.C. at 292, 833 S.E.2d at 852 (Ct. App. 2019) [emphasis added]. "Necessarily, the claimant must show that the language of the conveyance is specific enough to determine a reasonably precise location of its boundaries so that members of the public will not be excluded from property rightfully belonging to them." *Id.* [emphasis added]. Further, a grant from the sovereign to a subject is construed strictly in favor of the government and against the grantee. *Hobonny Club, supra,* 252 S.E.2d at 135-36, 272 S.C. at 396.

The only statutory provision for bringing suit to claim an interest in tidelands is §48-39-220 which states as follows:

> 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. (emphasis added).

By its express language and as discussed below, this statute is not applicable to beaches.

SUMMARY JUDGMENT STANDARD

"[Summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56, SCRCP. This standard is met for partial summary judgment for the Defendants as set forth below.

JUDGMENT IS GRANTED TO THE DEFENDANTS TO THE EXTENT THAT THE PROPERTY AT ISSUE IS A BEACH

At the motions hearing on December 22 by WebEx, this Court asked whether an action to establish title to beaches is authorized by S.C. Code Ann. §48-39-220, *supra.* By the express language of this statute, such actions as to beaches are not authorized. ("Any person claiming an interest in tidelands which, for the purpose of this section, means all lands except beaches . . . .(emphasis added)).

In considering suits to quiet title to beach property, a preliminary issue exists as to whether the subject property of the suit is actually a beach. In this case, the grant from the State refers to the property as marshland but the plat provided by Plaintiff refers to it as beach[1]. Plaintiff has not provided any information about his surveyor's opinion to show whether the property, as it exists today, is by its nature a beach or a marsh; however, that the land may be on a river would not deprive it of its nature as a beach. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 42, 766 S.E.2d 707, 722 (2014) ("That stretch of sandy beach, a rare feature for a tidal river, is the only sandy beach on the Kiawah River."); see also, §48-39-10(H)

[11] The plat has not been identified as the same one referenced in the grant and it does not bear the referenced book and page number although it appears to be contemporaneous.

("'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established."). As established through numerous South Carolina cases, including those set forth above, Plaintiff is directed to provide a survey showing which part of the property is a beach and which is not. See also, note 2, *infra*, and as to further requirements of the survey, the conclusion, *infra.*

Although §48-39-220(C) provides that "[n]othing contained in this chapter shall be construed to change the law of this State as it exists on July 1, 1977, relative to the right, title, or interest in and to such tidelands, except as set forth in this section", this Court finds that it does not permit this quiet title suit based upon the 1891 grant. Even if, *arguendo*, Plaintiff had shown that the property is beach and that it was conveyed by the grant, under State law Plaintiff could not exclude others from walking or otherwise engaging in recreational activities on the beach. This is due to the established policy of the State regarding the beach, as stated in §48-39-250:

> (1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions: . . .
>
> (b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues; . . .
>
> (d) provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well-being.
>
> * * *
>
> (8) It is in the state's best interest to protect and to promote increased public access to South Carolina's beaches for out-of-state tourists and South Carolina residents alike.

And, as further provided in §48-39-260: "In recognition of its stewardship responsibilities, the policy of South Carolina is to . . . (6) preserve existing public access and promote the enhancement

of public access to assure full enjoyment of the beach by all our citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access . . . ." This authority makes clear that the public may not be excluded from walking or otherwise recreating on State beaches. Accordingly, even if Plaintiff is in a chain of title to a grant that covers the beach, a point that has not been established[2], Plaintiff cannot bring a quiet title action against the defendants that would bar them from access to the beach.

These conclusions are consistent with the public trust doctrine, as discussed above, and with the Supreme Court's acknowledgment of the public nature of the State's Atlantic Ocean shoreline. "The public trust doctrine . . . is the guiding principle behind the [Coastal Zone Management Act] CZMA. Under that doctrine, any use of tidelands must be to the public benefit . . . ." *Kiawah Dev. Partners, II, supra*, 411 S.C. at 41, 766 S.E.2d at 722. *See also, Smiley v. SCDHEC*, 374 S.C. 326, 649 S. E.2d 31 (2007).[3]

NON-BEACH PORTION OF PROPERTY

To the extent that the survey shows that the property claimed is marshland rather than beach, summary judgment is denied. Although Plaintiff has, so far, failed to provide a survey as to the property or a report of the conclusions of its surveyor, fact issues clearly remain in this suit.

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[2] Plaintiff has, so far, not produced a survey showing the location of the claimed property in relation to the 1891 grant. Therefore, we do not know if the granted land is partially or fully underwater now or whether it is aligned with the property claimed by Plaintiff.

[3] In *Smiley,* the Court reversed the Court of Appeals' conclusion that Smiley lacked constitutional standing, or the ability to establish injury, arising from a permit issued for a beach renourishment project. The appellate record included an affidavit from Smiley in which he stated that his use of the "flat, hard public beach on the Isle of Palms" was essential to his rehabilitation. He noted, also, his general enjoyment of the public beach and the disruption of the renourishment project. The Supreme Court concluded that the statements in the Affidavit clearly demonstrated a "stake in the outcome" which would allow Smiley to proceed with his challenge to the renourishment permit.

Therefore, summary judgment is denied as to any marshland claimed. Rule 56, *supra.*

CONCLUSION

For the foregoing reasons, this Court grants summary judgment for the defendants in this case to the extent that the property at issue is beach. As to any portion of the claim that is not beach, summary judgment is denied. The Plaintiff shall be allowed a continuance of the trial date and 30 days from the date of this Order to survey any non-beach portion of the claim, as this claim may allow for many of the defendants (who may no longer be affected by the claim) to be dropped from the suit. The survey should identify which part of the property at issue is beach and what is not, and the survey should identify where the 1891 grant is located in relation to the property claimed today. The survey must be provided to the parties upon completion.

Within 15 days of the completion of the survey, the Plaintiff shall notify the Court and the parties whether it intends to proceed on the basis of the existing pleadings and, if not, it must by that date move to amend the complaint based on the aforementioned survey. Depending upon how Plaintiff proceeds, this Court will issue an additional order allowing for a short period of discovery and deposition in relation to the survey and time for defendants to retain a surveyor if they should so choose.

AND IT IS SO ORDERED

[Electronic signature of Marvin H. Dukes, III, Master in Equity, follows]

Beaufort Common Pleas

Case Caption: Coffin Point Plantation Homeowners Association Inc VS South Carolina State Of , defendant, et al

Case Number: 2018CP0702109

Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069