

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Finkel Law Firm LLC,)	C/A No. 2021-CP-10-05353
)	
Plaintiff,)	
)	ORDER
V.)	
)	
Michael Miller, individually and in his official)	
capacity as the Charleston County Register of)	
Deeds,)	
)	
Defendant.)	

The Plaintiff filed this action asking this Court to issue a writ of mandamus ordering the Defendant Michael Miller (“Miller”) to: (1) immediately file all real estate documents that have been delivered to the Charleston Register of Deeds (“ROD”) office that have not been filed within one month of delivery; (2) mark the recorded real estate documents as being recorded on the same date that they were delivered to the Charleston ROD; and (3) record all future real estate documents which ROD receives in the order of the time at which they are brought to the Charleston ROD, regardless of whether they are personally delivered or are delivered by U.S. mail or parcel post. The Plaintiff also asks that the Court retain jurisdiction of this matter for a reasonable period to monitor the continued operation of the Charleston ROD by Miller to ensure that Miller continues to comply with his non-discretionary and ministerial duty under statutory law to timely record within one month of delivery to the Charleston ROD all real estate documents under the date and in the order of time at which they are delivered to the Charleston ROD.

Normally after the pleadings are joined a period of discovery takes place. However, the Court held a status conference with the parties’ lawyers, and both agreed that the Court’s

proposal to appoint an experienced real estate lawyer as a monitor would be the quickest and most prudent way to identify a solution to the problem at issue.

To that end the Court appointed Howard Yates, Esquire, one of the most experienced real estate lawyers in the Charleston County Bar as Court Monitor. Mr. Yates has over 40 years of weekly, if not daily, interaction with the Register of Deeds office. Mr. Yates enjoys the complete confidence of the Court and immediately agreed to his appointment, beginning his inquiry that same day.

Under the Court's order Mr. Miller was to allow Mr. Yates complete and unfettered access to the ROD office and its employees. Mr. Yates reports that since his appointment he was always allowed access to the ROD office any time he desired, including after-hours, and was allowed to meet with anyone he desired. In addition to his meetings with Mr. Miller and the office's employees, Mr. Yates reports that he spoke with numerous people including title examiners, lawyers, and current and former employees of the ROD offices in neighboring counties. He communicated with this Court on an almost daily basis for a period of over a month. From the beginning Mr. Yates stated his only goal was to get the office functioning as normally as possible as quickly as possible.

It became apparent very quickly that the problem was more than just the immediate recording of newly filed and backlogged documents. There are multiple steps involved in getting a document properly recorded. These issues are addressed in more detail in Mr. Yates's report to the Court. It also became apparent that there was no instant fix to the problem. There were numerous issues that need to be addressed in a systematic manner. Mr. Yates identified and addressed each. His report, which Mr. Miller has embraced, addresses short-term problems and solutions and will also hopefully result in long-term solutions as well.

From the beginning each party and Mr. Yates agreed that the unqualified objective should be to ensure the public has a properly functioning ROD office. Because this was the overriding objective, it meant that the typical discovery which would begin after the pleadings are joined would be delayed. This was appreciated by the Court. It allowed Mr. Yates to act expeditiously and to file his report in a remarkably short period of time.

Mr. Miller has consented to implement Mr. Yates's recommendations. This Court will continue to retain jurisdiction over this matter. Like the report of the Court's monitor, the purpose of this order is not to affix blame at this time. It goes without saying that the reasons for the current state of affairs are contested and complex. This intermediate resolution will hopefully result in a permanent fix.

It is important to note that this action was not brought as an attempt to remove the current ROD from his office. Indeed, courts in South Carolina generally have no power to remove an elected official from his or her duly elected office. Only the Governor of the state has such power, and even those powers are limited.

In a typical writ of mandamus action, the court is asked to order an official to perform a specific act which that office is obliged to perform under the law. This action was filed to require the ROD to record deeds and other documents within the time frame required under S.C. Code Section 30-5-90.

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy. Ex parte Littlefield, 343 S.C. 212, 540 S.E.2d 81 (2000); Willimon v. Greenville, 243 S.C. 82, 132 S.E.2d 169 (1963). A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). Mandamus will issue only to compel a public official to perform a mandatory legal duty. Redmond v. Lexington County School Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994). The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law. Littlefield, *supra*. When

the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued. In the Interest of Lyde, 284 S.C. 419, 327 S.E.2d 70 (1985).

City of Rock Hill v Thompson, 349 S.C. 197, 563 S.E.2d 101 (2002).

If it were as simple as the ROD refusing to record a particular document, the Court would take an entirely different path. However, it is not a single act that is being complained of, but rather a pattern of action or inaction which has resulted in a very large number of documents not being recorded properly in a timely manner. As noted above, Mr. Yates was in complete agreement that this was not a quest to place or absolve blame, but rather to quickly get the office running again in a manner that conforms with state law.

This Court believes the course of action proposed by Mr. Yates—and which has been embraced by Mr. Miller—will be the best way to remedy the problems facing this office, at least in the short term. The reward or punishment for service by an elected official in the performance of their public duties is through the ballot box. The actions taken by the Court should not be construed by anyone as an indication of what that result should be on election day.

Furthermore, this Order incorporates the consent order signed by the parties on the 10th day of February, 2022 as well as Mr. Yates' report dated January 31, 2022.

IT IS SO ORDERED.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Finkel Law Firm LLC,

PLAINTIFF,

vs.

Michael Miller, individually and in his official
capacity as the Charleston County Register of
Deeds,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

CASE NO: 2021-CP-10-05353

CONSENT ORDER

THIS MATTER comes before the Court upon consent of the parties to immediately adopt and incorporate the recommendations of Court liaison J. Howard Yates, Jr., Esq., detailed in the Charleston County Register of Deeds Report attached hereto as Exhibit A, pursuant to the terms and conditions set forth herein.

Plaintiff and Defendant agree that Defendant shall:

1. Hire experienced Register of Deeds staff from neighboring Counties to assist in preparing and recording documents.
2. Hand-stamp documents delivered to the Charleston County Register of Deeds Office for recording with the date they were received, pursuant to S.C. Code Ann. § 30-5-90 (1976).
3. Continue to accept assistance from Ms. Margaret T. Bailey, the Dorchester County Register of Deeds, and three of her staff, to prepare documents for recording each Saturday for eight hours and for four hours on Sunday until the backlog in document filing¹ is eliminated.
4. Cause the Imaging staff to work an additional two hours per day, and on Saturday and Sunday, until the filing backlog is eliminated.
5. Cause specially modified computers to be made available to the Indexing staff from their homes for indexing after hours and during the weekend.

¹ Filing herein shall be defined as preparing, recording, imaging, and indexing documents delivered to the Charleston County Register of Deeds Office, as those terms are used in Exhibit A.

6. Cause the Indexing staff to work an additional two hours per day, and on Saturday and Sunday, until the filing backlog is eliminated.

7. Train the visiting Dorchester County Register of Deeds Office staff on Charleston County's imaging system and utilize the trained Dorchester County Register of Deeds Office staff to index each Saturday for eight hours and for four hours on Sunday until the backlog in document filing is eliminated.

8. Include the designation of "pp" for personal property, "esmt" for easement, or "etc" for additional property such as marsh, to indexed documents in addition to listing the lot, block, and subdivision.

9. Extend the daily recording time from 8:30 a.m. to 4:30 p.m.

10. Cause the Register of Deeds Office to remain open to the public for the regular transaction of business, including the recording of documents, from 8:30 am to 4:30 pm, including between 11:30 a.m. to 12:30 p.m. Employees should take their breaks, including lunch breaks, on staggered shifts and if it is necessary to contact an employee who is on a break, then a cell phone should be used.

11. Request the addition of memory to the County's computer server, should it be necessary to accommodate the increased daily document load.

12. Cause employees to be cross-trained in recording, imaging, and indexing documents.

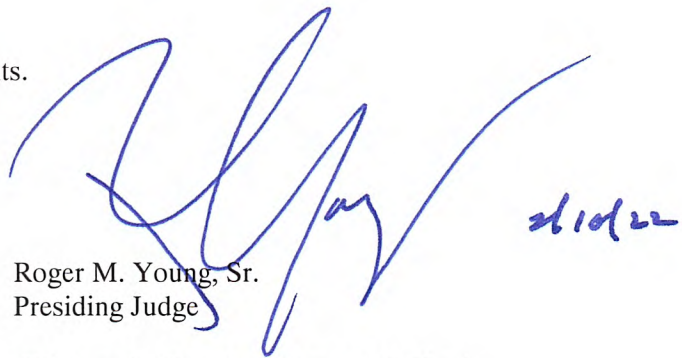
13. Shall record, regardless of the method of delivery, documents that are received in the order of the times at which they may be brought to the Register's office.

14. Continue to provide truthful and accurate updates in writing regarding the status of the backlog, the effectiveness of the measures adopted herein, and the availability of experienced staff to be employed pursuant to the terms of this Order to the Court on a bi-weekly basis, with such statuses to be sent to the Court and counsel for the parties via email by 5:00 p.m. every Friday, beginning Friday, February 19, 2022. These statuses shall contain the date through which mail has been opened and marked received, remaining number of document batches, and specific date(s) through which documents have been prepared, recorded, imaged, and indexed, respectively.

15. Adopt such further recommendations as the Court may subsequently direct to address the

delays and backlog in the recording of documents.

IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Judge

(Electronic Signature Page to Follow)

WE SO CONSENT:

FINKEL LAW FIRM LLC

/S/ Magalie A. Creech

Magalie A. Creech (SC Bar 78855)
4000 Faber Place Drive, Suite 450
N. Charleston, SC 29405
Tel.: (843) 577-5460
mcreech@finkellaw.com
Attorneys for Plaintiff

WE SO CONSENT:

GREEN LAW OFFICES

/S/ Dwayne Green

Dwayne Green (SC Bar 9559)
720 Magnolia Road, Suite 24
Charleston, SC 29407
Tel.: (843) 266-2626
dwayne@greenlawsc.com
Attorneys for Defendant

CHARLESTON COUNTY REGISTER OF DEEDS REPORT

FOR JUDGE ROGER M. YOUNG

PREPARED BY J. HOWARD YATES, JR., ESQ.

JANUARY 31, 2022

BACKGROUND

The objective of my report is not to determine the cause of the document backlog in the Register of Deeds Office (hereinafter referred to as R.O.D.), but to suggest ways to permanently resolve it. In this report I will refer to the Recording, Imaging and Indexing stations as they must work in coordination to accommodate the flow of documents.

To better understand the work flow in the R.O.D., I will generally explain the recording process. When a document is delivered to the Register of Deeds Office, it is presented to the staff at the Recording Station. The document is examined to confirm that it is in recordable form and that the recording fees are correct.

Recordable form requires that a document must be signed, witnessed and notarized. Certain documents, such as deeds and mortgages, must include additional statutory information. Documents that are not in compliance with the South Carolina filing requirements are rejected and returned to the maker for correction. The documents that are in compliance are then recorded. This process of document review is referred to as "prepping" the document. .

Once a document has been prepped, it is recorded. The document is time and date stamped, and given a book and page number. Notice of its recording is then electronically entered on the R.O.D. Daybook which shows the name of the maker and recipient, recording date, nature of the instrument and its Book and Page. The Day Book provides notice that a document has been recorded. Until it is indexed, the document is not yet available for view on the R.O.D. website.

Once recorded and given a book and page number, a document is then delivered to the R.O.D. Imaging Station where it is imaged onto the Charleston County Computer Server. After it is imaged, the document goes to the Indexing Station.

Indexing is a technical process in which the document is reviewed according to whether it is a deed, mortgage, tax lien or a miscellaneous instrument. For example, if the document is a deed, the indexer would type the name of the grantor, grantee, legal description, date of recording and the Book and Page number in the appropriate box on their computer screen. The entries are verified for accuracy and the deed is available for viewing on the R.O.D. website.

PROBLEMS AND REMEDIES

The R.O.D. currently has a backlog of documents delivered by UPS, Federal Express and the U.S. Mail. My recommendation is to hire experienced R.O.D. staff from neighboring Counties to assist in prepping and recording these documents. Because there may be a priority dispute between different filers, I strongly suggest that the documents be hand stamped as to the date they were received, see S.C. Code Ann. 30-5-90 (1976).

On Saturday, January 29, 2022, the R.O.D. from Dorchester County, Ms. Margaret T. Bailey and three of her staff assisted in prepping documents. With their assistance, the R.O.D. Office was able to prep approximately 547 documents and bring the UPS, Federal Express and U.S. Mail backlog up to December 7, 2021.

I recommend that the R.O.D. continue this practice each Saturday for eight hours and possibly for four hours on Sunday until the backlog is eliminated.

As more documents are recorded, the Imaging and Indexing Stations must be able to keep pace with the additional document flow.

I recommend that the Imaging staff be asked to come in one hour earlier and leave one hour later each day to accommodate the increased work flow. If it becomes excessive, it may be necessary for the Imaging staff to work on Saturday and Sunday, until the backlog is eliminated.

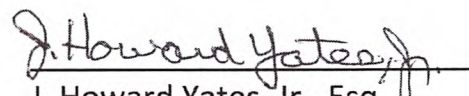
As this increased document flow reaches Indexing Department, I recommend that the Indexing staff be allowed to use specially modified computers to index at night and during the weekend from their homes. I also suggest that the Imaging staff start work an hour earlier and end work an hour later as needed, until the backlog is eliminated. If additional indexers are needed, I recommend that the visiting Dorchester County staff assist them after being trained on our indexing system.

When documents such as deeds and mortgages are indexed, I recommend that in addition to listing the lot, block and subdivision, any additionally described property or appurtenance such as marsh, an easement or personal property be noted in the index. This could be accomplished by using the abbreviation "pp" for personal property, "esmt" for easement or "etc" for additional property such as marsh.

I also highly recommend that the ROD extend the daily recording time from 8:30 a.m. to 4:30 p.m. and not close from 11:30 a.m. to 12:30 p.m. The employees could take their lunch breaks on staggered shifts. If it is necessary for an employee who is not on a lunch break to contact one who is, this could be done by cell phone.

Mr. Michael Miller and I are in discussions with the Information Technology Director to confirm that the County's computer server can handle the increased daily document load. If it can't, I will suggest that additional memory be added.

Finally, I recommend that employees be cross trained in Recording, Imaging and Indexing documents. This would allow for the continuity of operations if an employee in one of the stations is absent.


J. Howard Yates, Jr., Esq.

Dated: January 31, 2022



Charleston Common Pleas

Case Caption: Finkel Law Firm Llc VS Michael Miller , defendant, et al

Case Number: 2021CP1005353

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134