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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED
February 21, 2025
Lyle W. Cayce
Clerk

No. 24-60393

JENNINE LABUZAN-DELANE

Plaintiff—Appellant,

Versus

COCHRAN & COCHRAN LAND CO., INC., et al.,

Defendants—Respondents

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:22-CV-149

Before JOLLY, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:

Jennine Labuzan-Delane filed this pro se ejectment action claiming an ownership interest in land that was transferred by a federal land patent to her ancestor and two others nearly 200 years ago. While her notice of appeal expressly designated only the order that granted relief on the defendants' counterclaims, we can fairly infer that she also intended to appeal an earlier order granting summary judgment for the defendants on the ejectment claim. The appellees acknowledge that they are not prejudiced by the omission of the order from the notice of appeal. Accordingly, we have jurisdiction to review both orders. *See Turnbull v. United States*, 929 F.2d 173, 177 (5th Cir. 1991).

According to Labuzan-Delane, the district court erred by deciding the summary judgment motions when the parties had not conducted any discovery and the defendants refused to confer about a discovery plan. However, "[t]he right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law." *Birl v. Estelle*. 660 F.2d 592, 593 (5th Cir. 1981). Labuzan-Delane did not move to compel discovery from the defendants under Federal Rule of Civil Procedure 37 or seek additional time to conduct discovery under Federal Rule of Civil Procedure Procedure 56(d) before responding to their motions for summary judgment. Accordingly, her argument is unavailing. *See Potter v. Delta Airlines, Inc.*, 98 F.3d 881, 887 (5th Cir. 1996); *Birl*, 660 F.2d at 593.

Labuzan-Delane also contends that the district court erred by viewing the evidence in the light most favorable to the defendants and granting summary judgment despite

disputed factual issues. Specifically, she relies on evidence that the land patent was recorded in county records in 1919 as disputing the evidence that he sold the land to a bank in 1848, which the district court found dispositive of her claim. *See French's Lessee v. Spencer*, 62 U.S. 228, 232 (1858).

We review the grant of summary judgment de novo. *See Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010). Labuzan-Delane does not explain how the evidence that the patent was recorded in 1919 disputes the evidence that the land was sold in 1848, and her remaining arguments about deficiencies in the defendants' evidence are nonsensical. She thus fails to show that there was "a genuine dispute as to a material fact" sufficient to defeat summary judgment on the ejectment claim. FED. R. CIV. P. 56(a). Accordingly, we need not review the district court's alternative conclusion that the claim was defeated by adverse possession. *See Rockwell v. Brown*, 664 F.3d 985, 990 (5th Cir. 2011).

Finally, Labuzan-Delane challenges the district court's award of attorneys' fees and costs to the defendants, which we review for abuse of discretion. *See Autry v. Fort Bend Indep. Sch. Dist.* 704 F.3d 344, 349 & n.15 (5th Cir. 2013). She asserts that the court erred because an ejectment action by the heir of a patent grantee is not frivolous.

The district court awarded only those costs and fees incurred after it issued an order granting summary judgment on the ejectment claim that explained why the claim was meritless. Labuzan-Delane does not explain how the court either erred under Mississippi Code Annotated § 11-55-5 (4) or mad a clearly erroneous assessment of the facts. She thus fails to show that the court abused its discretion. *See United States v. Ragsdale*, 426 F.3d 765, 774 (5th Cir. 2005). The court also acted within its authority by warning Labuzan-Delane that she will face additional sanctions if she continues to

pursue the meritless claim. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-46 (1991); *In re Stone*, 986 F.2d 898, 902 (5th Cir. 1993).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED
February 21, 2025
Lyle W. Cayce
Clerk

No. 24-60393

JENNINE LABUZAN-DELANE

Plaintiff—Appellant,

Versus

COCHRAN & COCHRAN LAND CO., INC., et al.,

Defendants—Respondents

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:22-CV-149

Before JOLLY, GRAVES, and OLDHAM, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

Certified as a true copy and issued
as the mandate on Mar. 21, 2025
Attest:
Lyle W. Cayce
Clerk, U.S. Court of Appeals,
Fifth Circuit

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISIPPI

CIVIL ACTION NO. 4:22-CV-149

JENNINE LABUZAN-DELANE

Plaintiff

VS.

COCHRAN & COCHRAN LAND CO., INC., et al.,

Defendants

ORDER AND MEMORANDUM OPINION

On September 25, 2022, Jennine Labuzan-Delane initiated this action by filing her *pro se* Complaint [1]. On February 2, 2023, she filed her First Amended Complaint [41], wherein she named the following Defendants: Greenlee Family, LLC, Lakeland Farms, LLC, Cochran & Cochran Land Co. Inc., Cochran Farms Inc., Jennings Farms, Inc., and David T. Cochran ("the Defendants"). The parties have engaged in extensive motion practice, and there are currently eight pending Motions [55, 58, 60, 63, 68, 70, 72, 91] in the case. Having reviewed the filings, as well as the applicable authorities, the Court is

prepared to rule.

Relevant Factual and Procedural Background

Labuzan-Delane alleges that Greenlee Family, Lakeland Farms, and the Cochran Defendants are wrongfully occupying and claiming ownership of land that she inherited from her ancestor, Charles Augustus Labuzan ("Mr. Labuzan").

On August 10, 1836, Mr. Labuzan, Frederick W. Schmidt, and Robert L. DeCoin purchased Sections 33, 34, and 35 of Township 16, Range 8 West in Washington County, Mississippi from the Federal Government. Of the 1,361 acres acquired. Mr. Labuzan, Schimidt, and DeCoin were tenants in common and Mr. Labuzan owned a one-fourth interest in the land. According to Labuzan-Delane's Amended Complaint [41], a patent for the land was issued from the Federal Government to Mr. Labuzan, Schimidt, and DeCoin on December 10, 1840 and recorded in the land records on April 3, 1919. The patent vested Mr. Labuzan and the other grantees with a fee simple ownership of the property. The patent also included language that the property ownership was "to their heirs and assigns forever." [41] at p. 2. Labuzan-Delane contends that this language means that the patent vested an interest in Mr. Labuzan for eternity and, as his heir, she is the rightful owner of the land.

Conversely, the Defendants contend that Labuzan-Delane is not the rightful owner of the land because Mr. Labuzan conveyed his interest to the Merchants Bank of New Orleans in 1848. According to sectional indices attached to Lakeland Farms' Answer [54], Mr. Labuzan conveyed his one-fourth interest to Charles Gardiner on July 8, 1837. *See* [54], Ex. 2 at p. 1. In a deed dated July 8, 1842, Charles Gardiner conveyed the interest back to Mr. Labuzan. Mr. Labuzan then sold his interest to Merchants Bank of

New Orleans through a warranty deed dated March 20, 1848. The deed was recorded on August 12, 1848. Although the Defendants contend that Labuzan-Delane is not the rightful owner of the property because he sold his interest in the Land, Labuzan-Delane contends that, Mr. Labuzan's signature on the 1848 deed is forged and patented lands cannot be adversely possessed.

Labuzan-Delane's Amended Complaint [41] sets forth one claim of ejectment, alleging that the Defendants are in unlawful possession of the land. According to her Amended Complaint [41], the Defendants are jointly possessing acres within Sections, 33, 34, and 35 of the land in Washington County. She specifically contends that "[s]ome Defendants have leasing agreements with entities and/or individuals for the purpose of engaging in unauthorized timber and/or mineral operations." [46] at p. 10. According to the warranty deed attached to its Answer [46], Greenlee Family acquired ownership of the land on March 18, 2021. Attached to its Motion [68], Lakeland Farm's warranty deed shows that it acquired its interest in the land on December 20, 2012.

On April 28, 2022, Labuzan-Delane filed a Quitclaim Deed—from herself as grantor to herself as grantee—conveying the subject property to herself. In their Answers [46, 52, 54], all of the Defendants bring forth counterclaims, including claims for Slander of Title, Removal of Cloud on Title, Adverse Possession, violations of the Mississippi Litigation Accountability Act, and requests for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Labuzan-Delane has filed separate Motions to Dismiss [55, 63, 70] the Defendants' counterclaims. In turn, Greenlee Family and Lakeland Farms filed Motions for Summary Judgment [58, 68] seeking dismissal of Labuzan-Delane's ejectment claim.

Analysis and Discussion

The Court will first address Greenlee Family's and Lakeland Farms' Motion for Summary Judgment [58, 68]. Then, the Court will resolve Labuzan-Delane's Motions to Dismiss [53, 63, 70].

I. *Greenlee Family's and Lakeland Farms' Motions for Summary Judgment [58, 68]*

Summary judgment is warranted when the evidence reveals no genuine dispute regarding any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). Rule 56 "mandates entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Nabors v. Malone*, 2019 WL 2617240, at * 1 (N.D. Miss. June 26, 2019) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

"The moving party 'bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact.'" *Id.* (quoting *Celotex*, 477 U.S. at 323). "The nonmoving party must then 'go beyond the pleadings' and 'designate specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting *Celotex*, 477 U.S. at 324). Importantly, "the inferences to be drawn from the underlying facts contained in the affidavits, depositions, and exhibits of record must be viewed in the light most favorable to the party opposing the motion." *Waste Mgmt. of La., LLC v. River Birch, Inc.*, 920 F.3d 958, 964 (5th Cir. 2019) (quoting *Reingold v. Swiftships, Inc.*, 126 F.3d 645, 646 (5th Cir. 1997)). However, "[c]onclusory allegations, speculation,

unsubstantiated assertions, and legalistic arguments are not an adequate substitute for specific facts showing a genuine issue for trial." *Nabors*, 2019 WL 2617240 at *1 (citing *TIG Ins. Co. v. Sedgewick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002)) (additional citations omitted).

Both Greenlee Family and Lakeland Farms filed Motions for Summary Judgment [58, 68] seeking dismissal of Labuzan-Delane's ejectment claim on the ground that her ancestor, Mr. Labuzan, conveyed his interest away in 1848, and even if he had not, the doctrine of adverse possession forecloses any claim Labuzan-Delane may have.

First, the Defendants contend that on March 20, 1848, Mr. Labuzan conveyed his full, one-fourth interest of the property to the Merchants Bank of New Orleans. Specifically, Greenlee Family argues that "Mr. Labuzan conveyed his entire fee-interest in the property to Merchants Bank, and therefore severed any heir of future descendants' claim to the subject property." [59] at p. 3. Both Greenlee Family and Lakeland Farms rely on certified land records attached to their Motions [58, 68], which show Mr. Labuzan transferring his interest to Merchants Bank through a warranty deed. See [58], Ex. 1; [68], Ex. 5. Additionally, Lakeland Farms argues that "[Labuzan-Delane] omitted the first several pages of the Section Indices, each of which would have disclosed to Plaintiff that her alleged ancestor [sic] Charles A. Labuzan, acquired an interest in the property on August 10, 1836, and sold his interest in 1848." [69] at p. 2.

Moreover, the Defendants contend that even if there were no certifiable records showing that Mr. Labuzan transferred his interest in 1848, the land has been adversely possessed for 175 years. The Defendants contend that, prior to acquiring the land, several others were in possession of the land. Labuzan-Delane does not dispute the fact

that others have possessed the land since 1848, she instead simply argues that patented land cannot be adversely possessed.

In response, Labuzan-Delane maintains her position that she is the rightful owner of the property in Washington County. The crux of her argument is that Mr. Labuzan's signature was forged on the 1848 deed to Merchants Bank and the land patent gave Mr. Labuzan's heirs an interest in the land forever. Labuzan-Delane specifically that the signature on the 1848 instrument conveying the land to Merchants Bank is not the original signature of Mr. Labuzan. She contends that Mr. Labuzan's real signature is the one included on the 1846 Live Birth Certificate, which is attached to her Motion for Judicial Notice [72]. Essentially, Labuzan-Delane argues that the signature from the 1848 deed and the signature from the 1846 Birth Certificate are not the same. Her argument is grounded in the fact that each signature contains different variations of the letter "C", and therefore the signatures are not the same.

"When a party challenges the validity of a properly [] acknowledged deed, that party must overcome several presumptions favoring the legitimacy of the document." *Mapp v. Chambers,* 25 So. 3d 1096, 1101 (Miss. Ct. App. 2010). "One of the presumptions is authenticity, which 'provides that, where a deed is properly acknowledged, the instrument is presumed to be authentic because the certificate of acknowledgment infers verity and presumptively states the truth.'" *Catlett v. Catlett*, 358 So. 3d 366, 374 (Miss. Ct. App. 2023) (quoting *Mapp*, So. 3d at 1101). Here, the Defendants concede that the 1848 deed does not contain the original signature of Mr. Labuzan. However, according to the Defendants, this is because in 1848 photocopiers did not exist, and it was the job of the county clerk to record the deed through her own handwriting. To

support their position, the Defendants cite the Hutchinson's Code, which is now codified as Miss. Code Ann. § 89-5-25 (1). The Code provides in pertinent part:

> (1) It shall be the duty of the clerk of the chancery court to whom any written instrument is delivered to be recorded, and which is properly recordable in his county, to record the same without delay, together with the acknowledgments of proofs and the certificates thereof, and also the plats of survey, schedules, and other papers thereto annexed, *by entering them word for word in a fair handwriting*, or typewriting, or by filling up printed forms, or by recording by photostat machine or by other equally permanent photographic or electronic process, and entering the hour and minute, the day of the month, and the year when the instrument was delivered to him for record, and when recorded.

Miss Code Ann. § 89-5-25 (emphasis added).

Under Mississippi law, "[i]t is presumed that the notary making a certificate of acknowledgment has certified truth and has not been guilty of a wrongful or criminal action. The presumption has been stated to be one of the strongest in law." *Matthews v. Whitney Bank*, 282 So. 3d 786, 792 (Miss. Ct. App. 2019) (quoting *Nichols v. Sauls' Est.*, 250 Miss. 307, 316, 165 S0. 2d 352, 356 (1964)). "This presumption can be overcome only by clear and convincing evidence." *Mapp*, 25 So. 3d at 1101.

Labuzan-Delane has not provided any evidence that the county clerk engaged in any criminal conduct when recording the 1848 deed. The only argument Labuzan-Delane provides is that "during discovery [] [she'll] secure the affidavits of certified forensic handwriting experts to attest to the disputed signatures to the fact that the evidence suggests that the individual who wrote said March 20, 1848 sales contract is the same individual who signed my ancestor's signature." [82] at p. 9. The Court finds this argument unavailing. As noted above, the Defendants admit that the signature on the 1848 deed is not Mr. Labuzan's original signature, Instead, it is the signature of the

county clerk because she recorded the instrument through her own handwriting. Labuzan-Delane has come forward with no summary judgment type evidence to support her position. In addition, she has not made a Rule 56(d) request that she be permitted to engage in discovery before responding to Defendants' requests for summary judgment.

Furthermore, even if the Court found that Mr. Labuzan's signature was forged on the 1848 deed to Merchants Bank, the doctrine of adverse possession would foreclose any claim Labuzan-Delane may have. In Mississippi, "to establish a claim of adverse possession, [the claimant] must show that his possession was '(1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful.'" *Anderson v. Jackson*, 338 So. 3d 629, 641 (Miss. Ct. App. 2022) (quoting *West v. Brewer*, 579 So. 2d 1261, 1262 (Miss. 1991)). Greenlee Family and Lakeland Farms contend, and Labuzan-Delane does not contest, that several others have openly possessed the lands since 1848. Despite conceding that others have possessed this property for almost 200 years, Labuzan-Delane argues that her ownership of the land comes directly from the land patent and that the land cannot be adversely possessed.

To support her contention, Labuzan-Delane relies on several cases: *De la Vergne Refrigerating Mach. Co. v. Featherstone*, 147 U.S. 209, 13 S. Ct. 283, 37 L. Ed. 138 (1893); *Gibson v. Chouteau*, 80 U.S. 92, 20 L. Ed. 534 (1871); *Redfield v. Parks*, 132 U.S. 239, 10 S. Ct. 83, 33 L. Ed. 327 (1889); *Willoughby v. Caston*, 72 So. 129 (Miss. 1916). In *Featherstone*, the Supreme Court held that when a grantee applies for a patent but dies before the patent is issued, the patent will still pass to the heirs. *Featherstone*, 147 U.S. at 230. In *Gibson*, the Supreme Court held that the statute of limitations for adverse

possession does not run if the Government owns the land. *Gibson*, 80 U.S. at 104. In *Redfield*, the Supreme Court concluded that a plaintiff cannot bring a claim of ejectment until the title passes from the Government to a private citizen and adverse possession does not apply to land when the Government still holds title to the land. *Redfield*, 132 U.S. at 243. Similar to the holding in *Gibson*, the court in *Willoughby* found that land owned by the Government cannot be adversely possessed. *Willoughby,* 72 So. at 131. The Court finds these cases distinguishable from the case at bar. Here, Labuzan-Delane argues that because Mr. Labuzan received a land patent from the Government, the land can never be adversely possessed by private individuals. None of these cases support that proposition.

Importantly, the Supreme Court held that land received through a patent remains with the grantee's heirs *unless the land is conveyed away by the grantee or by the heirs. French's Lessee v. Spencer*, 62 U.S. 228, 232 16 L. Ed. 97 (1858). That is precisely what occurred here.

For reasons articulated above, Labuzan-Delane's ejectment claim must fail. That claim is hereby DISMISSED.

II. *Labuzan-Delane's Motions to Dismiss Counterclaims [55, 63, 70]*

Having dismissed Labuzan-Delane's ejectment claim, the Court now turns to the Defendants' counterclaims. Greenlee Family and the Cochran Defendants assert the following counterclaims: Slander of Title, Removal of Cloud on Title, Adverse Possession, violation of the Mississippi Litigation Accountability Act, and they also seek sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter,

accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*, 129 S. Ct. 1937.

Ultimately, the district court's task "is to determine whether the plaintiff has stated a legally cognizable claim that is plausible, not to evaluate the plaintiff's likelihood of success." *In re McCoy*, 666 F.3d 924, 926 (5th Cir. 2012) (citing *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010)). Therefore, the reviewing court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff. *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 232-33 (5th Cir. 2009). Still, this standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft*, 556 U.S. at 678, 129 S. Ct. 1937.

Although Labuzan-Delane filed separate Motions to Dismiss [55, 63, 70], her arguments articulated in those Motions [55, 63, 70] are the same. In essence, she makes the same arguments that she raised in support of her ejectment claim. For example, she contends that the slander of title claim fails because patented land cannot be sold—an argument this Court has already rejected. In their Answer [54], Lakeland Farms also asserts a counterclaim for adverse possession. Although Labuzan-Delane does not dispute the fact that others have occupied the land, she argues that patented land cannot be adversely possessed. In its analysis above, the Court has also rejected that

argument. The Court sees no need to again set forth the reasoning as to why those arguments are meritless. Labuzan-Delane has not shown that the counterclaims should be dismissed. Her Motions [55, 63, 70] are therefore DENIED.

Conclusion

For the reasons set forth above, Greenlee Family's and Lakeland Farms' Motions for Summary Judgment [58, 68] are GRANTED. Labuzan-Delane's ejectment claim set forth in her Amended Complaint [41] is DISMISSED *with prejudice* as to all Defendants. The Defendants' counterclaims remain pending at this time.

SO ORDERED, this the 24th day of July, 2023

/s/ Sharion Aycock

UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISIPPI

CIVIL ACTION NO. 4:22-CV-149

JENNINE LABUZAN-DELANE

Plaintiff

VS.

COCHRAN & COCHRAN LAND CO., INC., et al.,

Defendants

ORDER AND MEMORANDUM OPINION

On September 25, 2022, Jennine Labuzan-Delane initiated this action by filing her *pro se* Complaint [1]. On February 2, 2023, she filed her First Amended Complaint [41], wherein she named the following Defendants: Greenlee Family, LLC, Lakeland Farms, LLC, Cochran & Cochran Land Co. Inc., Cochran Farms Inc., Jennings Farms, Inc., and David T. Cochran (collectively "the Defendants"). Now before the Court are the Defendants' Motions for Summary Judgment [101, 103, 114] as to their counterclaims. Having reviewed the filings, as well as the applicable authorities, the Court is prepared to rule.

Relevant Factual Background

The Court discussed the background of this case in its previous Order and Memorandum Opinion [93] and sees no need to regurgitate the entire factual basis giving rise to this lawsuit. But the Court does find it appropriate to briefly provide context of the ejectment claim Labuzan-Delane asserted and the Court's disposition of her claim.

In her Amended Complaint [41], Labuzan-Delane set forth one claim of ejectment, asserting that the Defendants were wrongfully occupying land that her ancestor, Charles A. Labuzan, acquired through a federal land patent. The Defendants subsequently filed their Answers [46, 52, 54] which included counterclaims. Thereafter, the Defendants filed Motions for Summary Judgment [58, 68] seeking dismissal of Labuzan-Delane's ejectment claim.

In its Order and Memorandum Opinion [93], the Court granted summary judgment and dismissed Labuzan-Delane's ejectment claim. The Court ultimately concluded that Mr. Labuzan sold his share of the subject land in 1848 and that Labuzan-Delane therefore had no right to the land. The Court also held that the doctrine of adverse possession foreclosed any claim Labuzan-Delane may have. At that time, the Court made no ruling whatsoever as to the Defendants' counterclaims. Greenlee Family, Lakeland Farms, and the Cochran Defendants assert counterclaims for slander of title and removal of cloud on title. Lakeland Farms asserts two additional counterclaims for adverse possession and a violation of the Mississippi Litigation Accountability Act. Through their present Motions [101, 103, 114], the Defendants seek summary judgment in their favor on their counterclaims.

Summary Judgment Standard

Summary judgment is warranted when the evidence reveals no genuine dispute regarding any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). Rule 56 "mandates entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Nabors v. Malone*, 2019 WL 2617240, at * 1 (N.D. Miss. June 26, 2019) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

"The moving party 'bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact.'" *Id.* (quoting *Celotex*, 477 U.S. at 323). "The nonmoving party must then 'go beyond the pleadings' and 'designate specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting *Celotex*, 477 U.S. at 324). Importantly, "the inferences to be drawn from the underlying facts contained in the affidavits, depositions, and exhibits of record must be viewed in the light most favorable to the party opposing the motion." *Waste Mgmt. of La., LLC v. River Birch, Inc.*, 920 F.3d 958, 964 (5th Cir. 2019) (quoting *Reingold v. Swiftships, Inc.*, 126 F.3d 645, 646 (5th Cir. 1997)). However, "[c]onclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments are not an adequate substitute for specific facts showing a genuine issue for trial." *Nabors*, 2019 WL 2617240 at *1 (citing *TIG Ins. Co. v. Sedgewick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002)) (additional citations omitted).

Analysis and Discussion

As noted above, the Defendants assert several counterclaims. The Court will address each counterclaim in turn.

I. The Defendants' Slander of Title Counterclaim

"To succeed in an action for slander of title, a claimant must show that another has *falsely* and *maliciously* published statements that disparage or bring into question the claimant's right of title to the property, thereby causing special damage to the claimant." *Mize v. Westbrook Const. Co. of Oxford, LLC*, 146 So. 3d 344, 348 (Miss. 2014) (emphasis in original). "The slander may consist of a writing, a printing, or words of mouth, but they will provide grounds for a cause of action only if the statements have been made *falsely* or *maliciously*." *Id.* (emphasis in original).

"Malice...may be inferred by one's actions." *Id.* "Malice exists in the mind and usually is not susceptible of direct proof. The law determines malice by external standards; a process of drawing inferences by applying common knowledge and human experience to a person's statements, acts, and the surrounding circumstances." *Phelps v. Clinkscales*, 247 So. 2d 819, 821 (Miss. 1971).

The Defendants argue that from the outset Labuzan-Delane's lawsuit has been frivolous because she knows that she is not the rightful owner of the land. They further contend that Labuzan-Delane slandered their titles when she knowingly filed a quitclaim deed from herself as grantor to herself as grantee even though she has no claim to the land. Simply put, the Defendants take the position that the deed was filed falsely and maliciously, thus meeting the elements for a slander of title claim. To support their position, the Defendants rely on the Court's Order and Memorandum

Opinion [93], wherein the Court held that Labuzan-Delane's ancestor sold his share of the land and dismissed her ejectment claim.

In response, Labuzan-Delane does not rebut the Defendants' slander of title argument. Instead, she contends that the Defendants have failed to meet their burden because their arguments are not supported by the record. In particular, she contends that the Defendants are unable to identify portions of the record to support their arguments because no such record exists. She alleges that there is no record because she was not given a chance to conduct discovery under Federal Rule of Civil Procedure Rule 26(f). In support of her position, Labuzan-Delane references emails she had with counsel for the Defendants, wherein she allegedly proposed that the parties come up with a discovery plan to submit to the Court. Defense counsel responded by informing Labuzan-Delane that it is generally left up to the Court to enter an Order directing the parties to confer about discovery.

Under Federal Rule of Civil Procedure 56(d), when facts are unavailable to the nonmovant (in this case Labuzan-Delane) the court may allow the nonmovant to conduct discovery "if [the] nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." FED. R. CIV. P. 56. The Fifth Circuit has also held that "the non-moving party must set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist and indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion." *Am. Fam. Life Assur. Co. of Columbus v. Biles*, 714 F.3d 887, 894 (5th Cir. 2013).

Here, Labuzan-Delane had the burden to submit either an affidavit or a declaration

to the Court requesting discovery. However, no such request was made. While her Response [105] includes email correspondence between the parties inquiring about discovery, those emails do not comply with Rule 56(d) standard. Although Labuzan-Delane is proceeding *pro se* and therefore is entitled to *some* leniency, she still must comply with the applicable rules. *See e.g. Miller v. Tower Loan of Miss., LLC,* 2022 WL 3093292, at *2 (N.D. Miss. Aug. 3, 2022) ("[A] litigant's pro se status does not negate the duty to comply with general rules of litigation."); *see also Amos v. Cain*, 2022 WL 610344, at *3 (N.D. Miss. Mar. 1, 2022); *Calhoun v. Hargrove*, 312 F.3d 730, 733-34 (5th Cir. 2002).

Considering that Labuzan-Delane did not comply with the requisite standard to seek discovery under Rule 56(d) and she did not otherwise oppose the Defendants' request for summary judgment on the slander of title counterclaims in terms of competent summary judgment evidence, along with the fact the Defendants have provided competent evidence to support their claims, the Court finds the Defendants' requests to be well-taken. The Defendants' Motions for Summary Judgment [101, 103, 114] as to their slander of title counterclaim are GRANTED.

II. The Defendants' Removal of Cloud on Title Counterclaim

"In suits to confirm title, or to remove clouds, it is the duty of claimant to deraign title." *Dixon v. Parker,* 831 So.2d 1202, 1204 (Miss. Ct. App. 2002) (citing *Russell v. Town of Hickory,* 76 So. 825 (Miss. 1917)). "To have title confirmed, the claimant must either be in possession or the property must be occupied." *Id.*

The Defendants argue that they are the rightful owners of their respective tracts of the land and therefore Labuzan-Delane is clouding their titles. Attached to their Motions [101, 103, 114], the Defendants include the deraignments of title for each of their tracts. *See* [101], Ex. 8-9; [103], Ex. 3; [114], Ex. 5-15. These exhibits appear to be excerpts from the Land Deed Record Book from Washington County, Mississippi. According to the exhibits, Greenlee Family owns two parcels of land, Lakeland Farms owns one parcel of land, and the Cochran Defendants own eleven parcels of land. Based on this evidence the Defendants seek to have their titles confirmed. The Defendants rely on a ruling from the District Court for the Southern District of Mississippi, wherein the district court confirmed a counter plaintiff's title via a slander of title claim against a counter-defendant. *Brown v. Mann*, 2006 WL 3825234, at *4 (S.D. Miss. Dec. 27, 2006).

Labuzan-Delane makes the same argument for this claim as she did the slander of title claim—that the Defendants have not met their summary judgment burden because she did not get the chance to conduct discovery. For the same reasons articulated above, this argument is unavailing.

Section 11-17-35 of the Mississippi Code provides, in pertinent part:

> In bills to confirm title to real estate, and to cancel and remove clouds therefrom, the complainant must set forth in plain and concise language the deraignment of his title...A mere statement therein that complainant is the real owner of the land shall be insufficient, unless good and valid reason be given why he does not deraign his title. In all such cases, final decrees in the complainant's favor shall be recorded in the record of deeds...

MISS. CODE ANN. § 11-17-35.

Here, the Defendants do not simply state that they are the rightful owners of their tracts. They also provide the Court with copies of title deraignments showing how

each of the tracts were acquired. The deraignments have also been recorded and notarized in the Land Deed Record Book in Washington County Mississippi. In the Court's view, the Defendants have properly deraigned their titles. And, as indicated above, Labuzan-Delane has provided no competent summary evidence to the contrary.

The Defendants' Motions for Summary Judgment [101, 103, 114] as to their removal of cloud on title are GRANTED.

Having resolved the claim, the Court turns to the issue of removing the cloud. First, the Court finds that the quitclaim deed filed on April 25, 2022 from Labuzan-Delane as grantor to herself as grantee is null and void. The Court further finds it appropriate for the Defendants to prepare separate quitclaim deeds in their favor for Labuzan-Delane to execute to be filed in the land records in Washington County, Mississippi. The Defendants shall prepare and mail, via certified mail, the deeds (and other documentation if appropriate) for Labuzan-Delane to execute. Once the Defendants mail the deeds, they shall file of Notice of Service indicating the same on the docket. Labuzan-Delane shall execute the deeds in front of a notary and return the deeds to the Defendants via certified mail within twenty-one (21) days of receipt.

III. Lakeland Farms' Adverse Possession Counterclaim

Lakeland Farms assert a counterclaim for adverse possession. In its previous Order and Memorandum Opinion [93], the Court held that the doctrine of adverse possession would foreclose any claim that Labuzan-Delane may have. Lakeland Farms Motion for Summary Judgment [103] as to its adverse possession

counterclaim is GRANTED.

IV. Lakeland Farms' Mississippi Litigation Accountability Act Counterclaim

Lakeland Farms seeks attorney's fees and other costs under the Mississippi Litigation Accountability Act. In reference to awarding costs for meritless actions, the Mississippi Litigation Accountability Act provides, in pertinent part:

> [I]n any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorney's fees and costs against any party or attorney if the court, upon the motion of any party or on its own motion, finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action, or any claim or defense asserted, was interpreted for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including, but not limited to, abuse of discovery procedures available under Mississippi Rules of Civil Procedure.

MISS. CODE ANN. § 11-55-5(1).

The Act goes on to address recovering fees from *pro se* litigants:

> No party, except an attorney licensed to practice law in this state, who is appearing without an attorney shall be assessed attorney's fees unless the court finds that the party clearly knew or reasonably should have known that such party's actions, claims or defense or any part of it was without substantial justification.

MISS. CODE ANN. § 11-55-5(4).

As a basis for its request to recover under the Act, Lakeland Farms argues Labuzan-Delane failed to disclose in her Amended Complaint [41] that her ancestor,

Charles Labuzan, transferred his interest in the subject land in 1848. Lakeland Farms further contends that Labuzan-Delane intentionally failed to include the first three pages of the sectional index which show that her ancestor sold his interest in the land. According to Lakeland Farms, its counsel, on numerous occasions, notified Labuzan-Delane of these omissions and requested that she voluntarily dismiss her lawsuit. Labuzan-Delane refused to dismiss her claim and Lakeland Farms contends that it has incurred attorney's fees and costs as a result of this lawsuit. Lakeland Farms takes the position that because it notified Labuzan-Delane, no numerous, that her claim lacked merit and she refused to dismiss her claim, it is entitled to attorney's fees and other costs under the Act.

As noted above, on July 24, 2023, the Court entered its Order and Memorandum Opinion [93] dismissing Labuzan-Delane's ejectment claim. On August 7, 2023 Greenlee Family's counsel emailed Labuzan-Delane urging her to remove the cloud on the title in light of the Court's ruling. Subsequently, on August 9, 2023, the Cochran Defendants' counsel emailed Labuzan-Delane imploring her to do the same. On August 17, 2023, Labuzan-Delane responded via email to the Defendants stating that, "[I] will never sign any agreements to transfer my lands to you." [101], Ex. 6; [114], Ex. 3.

Importantly, the Act urges against mandating a *pro se* party to pay attorney's fees *unless the party reasonably knew their claim was not substantially justified.* The Court notes that at the time Labuzan-Delane initiated her lawsuit, she could have plausibly believed her claim was substantially justified. However, even granting her the benefit of the doubt, the Court finds any such plausible basis ceased after the Court entered its previous Order and Memorandum Opinion [93]. In that ruling, the Court clearly

articulated multiple reasons as to why Labuzan-Delane's arguments were inherently flawed. Counsel for the Defendants again requested that she voluntarily dismiss her claim. She again refused. At that time, Labuzan-Delane reasonably knew her claim was not substantially justified.

Although in a previous Order [121], the Court declined to impose sanctions against Labuzan-Delane, in large part because of her *pro se* status, the Court finds it appropriate to now impose sanctions for the Defendants incurred costs after August 7, 2023—the date that she was requested (again) via email to voluntarily dismiss her claim in light of the Court's summary judgment ruling. Although the Defendants have submitted some expenses associated with this case, the Court finds that, in light of the ruling herein, the Defendants should be provided an opportunity to re-submit any fees and/or expenses that have been incurred *since August 7, 2023.*

Taking this into account, the Defendants shall submit an itemized list of the fees that they have incurred after August 7, 2023 that they contend were incurred due to Labuzan-Delane's failure to dismiss her claim.

Moreover, the Court cautions Labuzan-Delane about her continued pursuits to acquire ownership of the subject land and engage in litigation regarding the same. The Court will order additional sanctions should Labuzan-Delane engage in such efforts. The Defendants are directed to advise the Court if Labuzan-Delane fails to comply with the Court's Order regarding the completion of deeds and/or other necessary documentation to remove the cloud on their titles. Should Labuzan-Delane refuse to comply, the Court will not hesitate to hold her in contempt and impose sanctions against her.

Conclusion

For the reasons set forth above, the Defendants' Motions for Summary Judgment [101, 103, 114] are GRANTED. The Defendants shall immediately mail the quitclaim deeds to Labuzan-Delane and file proof on the docket once they have done so. Labuzan-Delane shall have twenty-one (21) days from the certified mail postage receipt to return the notarized deeds (and any other documentation) to the Defendants. The Defendants shall submit list of their itemized fees that were incurred after August 7, 2023, within twenty-one (21) days of today's date.

SO ORDERED, this the 31st day of July, 2024.

/s/ Sharion Aycock

UNITED STATES DISTRICT JUDGE