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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Judge

Appellate Case No. 2024-000460
Court of Common Pleas Case No. 2023-CP-27-0001

MARK C. BOYLES,.....Appellant,

v.

NCP BAYOU, LLC,.....Respondent.

RECORD ON APPEAL

By: *s/F. Truett Nettles, II*
F. Truett Nettles, II, Of Counsel (SC# 4195)
ROSEN HAGOOD, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 266-8122 telephone
tnettles@rosenhagood.com
Attorney for Appellant

Lauren P. Williams (SC# 102341)
Russell P. Patterson (SC# 4375)
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
lauren@russellpattersonlaw.com
russell@russellpattersonlaw.com
Attorneys for Respondent

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 Mark C. Boyles, Individually and as Personal)
 Representative of the Estate of Grace Laverne)
 Boyles)
)
 Plaintiff,)
)
)
 vs.)
)
 NCP Bayou, LLC)
)
)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH
 JUDICIAL CIRCUIT

SUMMONS

(Non-Jury)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff or its counsel, F. Truett Nettles, II, Esquire, in the offices of Rosen Hagood, LLC at 40 Calhoun Street, Suite 450, Charleston, South Carolina, 29401, Charleston, South Carolina, 29401, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint in this action within the time aforesaid, the Plaintiff will apply to the Court for Judgment by default for the relief demanded in the Complaint.

January 3, 2023
 Charleston, South Carolina

s/ F. Truett Nettles, II
 F. Truett Nettles, II, Esq.
 Rosen Hagood, LLC
 40 Calhoun Street, Suite 450
 Charleston, SC 29401
 (843) 577-6726
 tnettles@rosenhagood.com
 Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH
COUNTY OF JASPER	)	JUDICIAL CIRCUIT
)	
Mark C. Boyles, Individually and as Personal)	
Representative of the Estate of Grace Laverne)	
Boyles)	
)	
Plaintiff,)	
)	
)	
vs.	)	COMPLAINT FOR
	)	DECLARATORY JUDGEMENT
NCP Bayou, LLC	)	(Non-Jury)
)	
)	
Defendant(s).)	
)	

The Plaintiff's would allege and show unto this Honorable Court that:

1. The Plaintiff, Mark C. Boyles, Sr., aka Mark C. Boyles, is a citizen and resident of the County of Jasper, State of South Carolina.
2. The Plaintiff Mark C. Boyles is petitioning the Jasper County Probate Court to open the Estate of the late Grace Laverne Boyles who died on December 5, 2021, and this Plaintiff is a surviving son of the decedent.
3. The Defendant NCP Bayou, LLC is, upon information and belief, a Delaware corporation and has appeared in the case of NCP Bayou, LLC vs. Mark C. Boyles et al., case number 2018-CP-27-00170 and is subject to the jurisdiction of this Court.
4. The real property which is the subject of this Declaratory Judgement action is comprised of two parcels of 41.3 acres and 20.6 acres all of which is located within Jasper County, State of South Carolina and is more particularly described in Exhibit A which is attached hereto and incorporated herein by reference.
5. This Declaratory Action is brought before this court pursuant to SC Code Section 15-53-30 (1976).

6. In order to secure a Settlement Agreement in a lawsuit previously pending in this court, the Plaintiff Mark C. Boyles executed a Confession of Judgement in favor of the creditor Coastal States Bank on December 31, 2013 in the total amount of one million thirty-four thousand thirteen dollars and sixty-one cents (\$1,034,013.61).

7. On or about December 5, 2017, Coastal States Bank assigned all of its interest in the loans and debts of Mark C. Boyles to the Defendant NCP Bayou, LLC.

8. On or about March 27, 2018, the Defendant NCP Bayou, LLC, caused the above referenced Confession of Judgement executed by the Defendant Mark C. Boyles to be recorded in the Jasper County Court of Common Pleas, case number 2018-CP-27-00170.

9. On September 30, 2019, the Defendant Mark C. Boyles filed a petition in the United States Bankruptcy Court for the District of South Carolina for relief under Chapter 7 of the Bankruptcy Code, case number 19-05116-dd.

10. By order of the United States Bankruptcy Court for the District of South Carolina dated January 24, 2020, the Defendant Mark C. Boyles was discharged from any and all personal liability for debts incurred prior to that date.

11. While the Plaintiff Mark C. Boyles is not personally liable for any debts or obligations to the Defendant NCP Bayou, LLC, any judgment lien held by this Defendant which was not avoided or modified by the Bankruptcy Court would survive discharge and closing of that case and such lien would remain attached to real property owned by Mark C. Boyles before the bankruptcy, except for property exempt under the South Carolina Homestead Act.

12. By deed dated October 31, 2016, the late Grace M. Boyles, mother of the Plaintiff, purportedly conveyed to Mark C. Boyles, Sr. the real property described in Exhibit A and in that deed reserved unto herself a life estate in the real property conveyed and that deed was recorded in the Jasper County Register of Deeds Office on November 1, 2016, in deed book 0933 at page 1527.

13. The Plaintiffs are informed and believe that any interest of the Plaintiff Mark C. Boyles in the subject real property would arise from the above referenced deed of the late Grace L. Boyles and the Defendant's rights, claim or lien on that property is limited thereto.

14. On page two of the above referenced deed from Grace M. Boyles to Mark C. Boyles, Sr., there is a statement that the deed was drafted and prepared by a person who is not a licensed attorney in the State of South Carolina and that deed was witnessed, notarized and filed with the Jasper County Register of Deeds by that same person.

15. The Plaintiffs are informed and believe that the drafting, witnessing, notarizing and filing of this deed constitutes the unauthorized practice of law under the laws of the State of South Carolina.

16. The Plaintiffs are informed and believe that the deed which was drafted, witnessed, notarized and filed in the public record by a non-lawyer is void, and the Plaintiff Mark C. Boyles has no valid, legal interest in the property at this time.

17. The Plaintiffs are informed and believe that the Defendant cannot enforce its judgement lien on the subject real property due to the invalidity of the deed purportedly creating an interest in the property for the Plaintiff Mark C. Boyles.

18. The Plaintiffs are informed and believe that the Defendant should not realize a benefit or profit arising from an invalid or improper act of a third party and the Defendant's enforcement of a judicial lien on the subject property constitutes an unjust enrichment which would be unjust and inequitable.

19. The Plaintiffs move before this Court to stay any further legal action by the Defendant in the case of NCP Bayou, LLC vs. Mark C. Boyles, Sr. et al. case 2018-CP-27-00170 until the validity or invalidity of the above referenced deed has been determined by this Court.

WHEREFORE, having fully set forth the basis for this Declaratory Judgment, the Plaintiffs pray that this Court issue a Declaratory Judgment in the following particulars:

- a. A judgement that the deed to real property recorded in book 0933 at page 1527 in the Jasper County Register of Deeds Office be declared invalid as a matter of law and equity.

- b. A judgement that the Defendant NCP Bayou, LLC shall not assert or enforce a judgement lien on the above-described property because, at this time, the Plaintiff Mark C. Boyles does not have a valid legal or equitable interest in the real property to which a judgement lien might attach.
- c. For the costs of this action.
- d. For such other and further relief as may be deemed just and proper by the court.

January 3, 2023
Charleston, South Carolina

s/ F. Truett Nettles, II
F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
t Nettles@rosenhagood.com
Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Mark C. Boyles, Individually and as Personal Representative of the Estate of Grace Laverne Boyles

Plaintiff,

vs.

NCP Bayou, LLC

Defendants.

IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER:

LIS PENDENS
(Action for Declaratory Judgement)

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon Complaint of the above-named Plaintiff against the above-named Defendants an action for a Declaratory Judgement that the purported judicial lien of the Defendant is not enforceable against the real property located in Jasper County, State of South Carolina. The premises covered and affected by this action to clear title is described as follows:

Parcel No. 1:

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Jasper and designated as Parcel No. 3 on that certain plat prepared by R. L. Sensenbach, R.L.S., dated February 1965, containing 41.3 acres more or less and recorded in the office of the Register of Deeds for Jasper County, South Carolina in Plat Book 14 at Page 7. Said piece, parcel or lot of land being bound and described on the aforementioned plat; On the Southeast by S.C. Hwy. 27-39, leading from U.S. Hwy. 278 To Great Swamp Church; on the Southwest by S.C. Hwy. 27-149, leading from S.C. Hwy. 27-39 To Sardis Cemetery; and on the Northwest by lands now or formerly of Ellis Malphrus.

TMS: Being a portion of 062-00-01-002

Parcel No. 2:

All that certain piece, parcel or lot of land situate, lying and being in the Jasper County, South Carolina and containing 20.6 acres more or less and being more particularly described on a plat prepared by James H. Mills, R.L.S., dated August 1970 and recorded in the Office of the Register of Deeds for Jasper County, South Carolina in Plat Book 12 at Page 12. Said piece, parcel or tract of land being

bound and described as follows: on the Northeast by lands now formerly of Hubert Powell and others, on the Southeast by lands formerly of L.C. Daring, on the Northwest land now or formerly Lilly F. Boyles and on the Southwest by the run of Great Swamp.

TMS: 047-00-03-027

Dated: January 3, 2023

s/ F. Truett Nettles, II
F. Truett Nettles, II
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
North Charleston, SC 29401
(843) 577-6726
tnettles@rosenhagood.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2023-CP-27-0001
Mark C. Boyles, Individually and as Personal Representative of the Estate of Grace Laverne Boyles,)	
)	
Plaintiff,)	
)	
vs.	)	ANSWER OF THE DEFENDANT
)	
NCP Bayou, LLC,)	
)	
Defendant.)	
_____)	

The Defendant, NCP Bayou, LLC, hereby responds to the Plaintiff’s Complaint, filed January 3, 2023 (“Complaint”), as follows:

FOR A FIRST DEFENSE
(General Denial)

1. That the Defendant denies each and every allegation set forth in the Complaint not hereinafter admitted, qualified or explained.
2. That the Defendant admits the allegations of Paragraphs 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 13 of the Complaint.
3. That the Defendant denies the allegations of Paragraphs 14 through 19 of the Complaint.
4. That as to the allegations of Paragraphs 2 and 5, the Defendant lack sufficient information upon which to admit or deny same and therefore denies said allegations.

FOR A SECOND DEFENSE
(Laches, Estoppel, Waiver, Unclean Hands)

5. That the Defendant repeats, re-alleges and incorporates herein by reference the allegations of Paragraphs 1 through 4 above.
6. That the Plaintiff's claims are barred by the equitable doctrines of laches, waiver, unclean hands, and estoppel.

FOR A THIRD DEFENSE
(Statute of Limitations)

7. That the Defendant repeats, re-alleges and incorporates herein by reference the allegations of Paragraphs 1 through 6 above.
8. That the Plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE, Defendant prays as follows:

1. That the Plaintiff's Complaint seeking to void the October 31, 2016 deed into the Plaintiff dated November 1, 2016 be denied.
2. That Defendant's judgment lien referenced in Paragraphs 7 and 8 of the Complaint be determined to be a first priority judgment lien against the 41.3 and 20.6 parcels, and that this Court order the sale of same by the Jasper County Sheriff as allowed by law.

/s/ Russell P. Patterson

Russell P. Patterson, SC Bar No. 4375
Lauren P. Williams, SC Bar No. 4375
RUSSELL P. PATTERSON, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
Attorneys for the Defendant,
NCP Bayou, LLC

Hilton Head Island, South Carolina
January 13, 2023

NCP, pursuant to Rule 11, SCRCP, has consulted with Defendant's counsel as to the resolution of this Motion prior to filing same, without success. NCP so moves.

RUSSELL P. PATTERSON, P.A.

/s/ Lauren P. Williams

Lauren P. Williams

P.O. Drawer 8047

Hilton Head Island, SC 29938

(843) 341-9300

lauren@russellpattersonlaw.com

Attorneys for the Defendants

July 19, 2023
Hilton Head Island, SC

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF JASPER)
)
Mark C. Boyles, Individually and as)
Personal Representative of the Estate)
of Grace Laverne Boyles)
)
Plaintiff,)
)
)
vs.)
)
NCP Bayou, LLC)
)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON
PLEAS FOR THE FOURTEENTH
JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2023-CP-27-0001

**OBJECTION TO
MOTION TO DISMISS**

The Plaintiff Mark C. Boyles, by and through his undersigned legal counsel, hereby consents to the dismissal of himself as Personal Representative of the Estate of Grace Laverne Boyles. No probate estate for the late Mrs. Boyles has been commenced in the Jasper County Probate Court at this time. Therefore, he agrees that he cannot pursue this legal action in that capacity.

The Plaintiff objects to that portion of the Motion to Dismiss filed by the Defendant for failure to state facts sufficient to constitute a cause of action. The Plaintiff is informed and believes that the complaint fairly and clearly sets forth allegations of law and fact to constitute a Declaratory Judgement.

September 27, 2023
Charleston, South Carolina

/s/ F. Truett Nettles, II
F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
nettles@rosenhagood.com
SC Bar No. 4195
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CIVIL ACTION NO.: 2023-CP-27-0001
Mark C. Boyles, Individually and as Personal Representative of the Estate of Grace Laverne Boyles,)	
)	
PLAINTIFF,	)	NCP PILGRIM, LLC'S MEMO IN SUPPORT OF ITS MOTION TO DISMISS
)	
vs.)	
)	
NCP Bayou, LLC,)	
)	
DEFENDANT.)	
_____)	

Defendant NCP Bayou, LLC ("NCP") submits this Memorandum of Law in support of its Motion to Dismiss, dated July 19, 2023. For the reasons below, the Court should dismiss Plaintiffs' Complaint because it fails to state a claim upon which relief may be granted.

FACTUAL BACKGROUND

This is a declaratory judgment action arising out of NCP's August 2022 efforts to collect a Jasper County judgment lien against Plaintiff Mark C. Boyles individually ("Boyles") by seizing and selling property located in Jasper County, identified as TMS No. 062-00-01-090 and 047-00-03-027 ("Subject Property"). As a direct result of those efforts, Plaintiffs filed the instant action alleging that a justiciable controversy existed regarding Defendant's ability to seize and sell the Subject Property in light of Plaintiffs' allegation that the underlying deed to the Subject Property was prepared by an individual engaging in the unauthorized practice of law. Specifically, Plaintiffs allege that the underlying deed was drafted, witnessed, notarized, and filed in the public record by a non-lawyer engaging in the unauthorized practice of law. Plaintiffs then allege that due to the alleged unauthorized practice of law, the underlying deed is null and void as a matter of law and Boyles has no legal interest in the Subject Property that Defendant can seize and sell.

LEGAL STANDARD

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint where the plaintiff fails to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869, 874 (2006). The court should dismiss a complaint when “the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff, would not entitle the plaintiff to relief of any theory.” *See Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

LEGAL ARGUMENT

Assuming, for the purposes of this Motion only, Plaintiffs’ allegation that the underlying deed to the Subject Property was prepared in connection with the unauthorized practice of law is correct, Plaintiffs’ Complaint fails to state facts sufficient to constitute a cause of action and must be dismissed. Plaintiffs’ Complaint fails to establish a justiciable controversy exists because as a matter of law there is no private cause of action for the unauthorized practice of law, and it is not the law of South Carolina that a deed prepared by a non-lawyer is null and void.

1. Plaintiffs’ Complaint Fails to State a Claim Because as a Matter of Law There Is No Private Cause of Action for the Unauthorized Practice of Law.

It is well established in South Carolina that there is no private cause of action for the unauthorized practice of law. *Franklin v. Chavis*, 371 S.C. 527, 535, 640 S.E.2d 873, 877 (2007) (“There is no private right of action in South Carolina for the unauthorized practice of law.” (*citing Linder v. Insurance Claims Consultants, Inc.*, 348 S.C. 477, 496-97, 560 S.E.2d 612, 622-23 (2002)); *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 123-24, 634 S.E.2d 5, 8-9 (Ct. App. 2006) (affirming dismissal of complaint when charges of unauthorized practice of law were the basis for all alleged causes of action because no private cause of action for the unauthorized practice of law exists.)).

Here, there is no question that charges of unauthorized practice of law are the basis for Plaintiffs' declaratory judgment cause of action. Specifically, Plaintiffs are seeking a determination by this Court that the deed granting Boyles a property interest in the Subject Property is null and void due to the alleged fact that it was drafted, witnessed, notarized, and filed in the public record by a non-attorney. Based on this determination, Plaintiffs are then asking the Court to declare that Defendant's judgment lien does not attach to the Subject Property due to the invalidity of the underlying deed based on the unauthorized practice of law. These claims constitute a private cause of action for the unauthorized practice of law, which does not exist under South Carolina law. Accordingly, Plaintiffs' Complaint must be dismissed for failure to state a valid claim as a matter of law.

2. Plaintiffs' Complaint Fails to State a Claim Because it is Not the Law of This State that a Deed Prepared in Connection with the Unauthorized Practice of Law is Null and Void.

Plaintiffs' Complaint must be dismissed because it is not the law of South Carolina that a deed prepared in connection with the unauthorized practice of law is null and void.

Throughout South Carolina case law there are multiple cases answering the question of what constitutes the unauthorized practice of law. *See, e.g. In re Helton*, 372 S.C. 245, 249, 642 S.E.2d 573, 575 (2007) (failure of attorney to supervise preparation of deeds by non-lawyer assistants constituted unauthorized practice of law); *In re Deddish*, 347 S.C. 614, 617, 557 S.E.2d 655, 657 (2001) (preparation of real estate deeds by non-lawyer constituted the unauthorized practice of law); *State v. Buyers Serv. Co.*, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987) (preparation of a deed falls within the definition of the practice of law and may constitute the unauthorized practice of law); *In re Easter*, 275 S.C. 400, 272 S.E.2d 32 (1980) (holding that the preparation of a deed for another constitutes the unauthorized practice of law). Included in these cases are cases specifically addressing whether the preparation of a deed by a non-lawyer

constitutes the unauthorized practice of law. *See supra*. However, there is not a single case in South Carolina holding that a deed prepared in connection with the unauthorized practice of law is null and void.

If the South Carolina Supreme Court wanted to establish that a deed prepared in connection with the unauthorized practice of law is null and void, the Court would explicitly state that ruling in the numerous cases determining a deed was prepared in connection with the unauthorized practice of law. The fact that not a single case addressing the unauthorized practice of law in preparing deeds holds that the resulting deed is null and void proves that is not the law of our state.

Furthermore, when faced with the decision of whether other documents prepared in connection with the unauthorized practice of law were null and void, South Carolina courts have explicitly held the documents remained valid. *See Brown v. Citifinancial, Inc.*, 414 F. Supp. 2d 561, 565 (D.S.C. 2006); *Franklin v. Chavis*, 371 S.C. 527, 535, 640 S.E.2d 873, 877 (2007); *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 496, 560 S.E.2d 612, 622 (2002). In *Franklin*, the Supreme Court ruled that a will drafted by an individual engaged in the unauthorized practice of law “should not be invalidated simply because it was drafted by a nonlawyer.” *Franklin* at 535, 640 S.E.2d at 877. Similarly, in *Brown*, the South Carolina District Court ruled that the arbitration agreement contained in a mortgage prepared by a party engaged in the unauthorized practice of law was not void due to the actions of the preparer. *Brown* at 565. In *Linder*, our Supreme Court ruled again that a contract as performed amounted to the partial unauthorized practice of law was not null and void. *Linder* at 496, 560 S.E.2d at 622 (contracting party is responsible for the value of work which did not constitute the unauthorized practice of law).

Additionally, our Courts have routinely held that litigation initiated and or pursued by a party engaged in the unauthorized practice of law does not render the proceedings a nullity, but

instead merely amounts to an amendable defect. *Brown v. Coe*, 365 S.C. 137, 144, 616 S.E.2d 705, 709, *order clarified*, 365 S.C. 664, 620 S.E.2d 323 (2005); *The Roof Dr., Inc. v. Birchwood Holdings, Ltd.*, 366 S.C. 637, 643, 622 S.E.2d 746, 750 (Ct. App. 2005); *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999); *Blue Star Rental & Sales, Inc. v. Ridge Env't, LLC*, No. 2014-MO-048, 2014 WL 6977616, at *3 (S.C. Dec. 10, 2014). Thus, the Court is not in the practice of voiding instruments that are prepared by a party engaging in the unauthorized practice of law.

S.C. Code Ann. §30-5-30(b) outlines the requirements for recording a deed. This section only requires that a deed must be signed by the grantor, must be acknowledged by two witnesses, and taken before an officer of the State competent to administer an oath. S.C. Code Ann. §30-5-30(b). There is no requirement in the statute that the deed must be prepared by a licensed attorney. In the Legislature wanted to require a deed to be prepared by an attorney to be valid and recorded, that requirements would have been explicitly stated in this section.

There are likely numerous deeds throughout the state of South Carolina that have been prepared by a non-lawyer likely constituting the unauthorized practice of law. If Plaintiffs' allegation is correct that these deeds are null and void due solely to their connection with the unauthorized practice of law, our courts would be inundated with litigation, not to mention the intent of the parties to these transactions would be swept aside by judicial decree based on technicalities. This is clearly not the intent of our Supreme Court when it determined that the preparation of a deed by a non-lawyer generally constitutes the unauthorized practice of law.

Finally, this lawsuit is the Plaintiffs' attempt to avoid a valid judgment through his own bad acts. The only reason Plaintiffs are trying to set aside this deed is so that he can obtain title to the Subject Property through his mother's estate free and clear of Defendant's valid judgment lien.

Here, there is no justiciable controversy to be resolved because the underlying deed to the Subject Property is not null and void due to its alleged connection with the unauthorized practice of law. Plaintiffs' conclusion regarding the validity of the underlying deed is incorrect as a matter of law. Therefore, there is no longer a question of whether Defendant's judgment lien attaches to the Subject Property. S.C. Code Ann. § 15-35-810 (final judgments shall constitute a lien upon the real estate of the judgment debtor situate in the county in which the judgment is recorded). Accordingly, Plaintiffs' Complaint must be dismissed pursuant to Rule 12(b)(6), SCRCP.

CONCLUSION

For all of the foregoing reasons, this Court should grant Defendants' Motion to Dismiss for Plaintiffs' failure to state a claim.

RUSSELL P. PATTERSON, P.A.

By: /s/ Lauren P. Williams
Russell P. Patterson (S.C. #4375)
Lauren P. Williams (S.C. #102341)
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
lauren@russellpattersonlaw.com
Attorneys for the Defendant

Hilton Head Island, South Carolina
September 27, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2023-CP-27-0001

Mark C. Boyles, Individually and as Personal)
Representative of the Estate of Grace Laverne)
Boyles,)

PLAINTIFF,)

vs.)

NCP Bayou, LLC,)

DEFENDANT.)
_____)

**CONSENT ORDER REGARDING
DISMISSAL OF MARK C. BOYLES,
AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF GRACE
LAVERNE BOYLES**

This matter comes before the Court upon Defendant’s Motion to Dismiss, dated July 19, 2023 (“Motion”). This Motion was scheduled for a hearing on September 28, 2023, at 10:00 a.m. Prior to the hearing, counsel for the parties reached a resolution partially resolving Defendant’s Motion. This resolution is as follows:

By agreement, Plaintiff Mark C. Boyles, as Personal Representative of the Estate of Grace Laverne Boyles, will be dismissed as a party to this matter. He is being dismissed from this action because no estate has been opened on behalf of Grace Laverne Boyles and thus, Mr. Boyles has not been appointed the Personal Representative. In the event an estate is opened on behalf of Grace Laverne Boyles, the Personal Representative may petition the Court to be a party to this lawsuit as provided by the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW

WE SO MOVE AND CONSENT:

/s/ F. Truett Nettles, III /9/29/23
F. Truett Nettles, II / Date
Rosen Hagood, LLC
40 Calhoun Street, Ste. 450
Charleston, SC 29401
(843) 577-6726
tnettles@rosenhagood.com
Attorney for Plaintiff

/s/ Lauren P. Williams /9/28/23
Lauren P. Williams (102341) / Date
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
lauren@russellpattersonlaw.com
Attorney for Defendants



Jasper Common Pleas

Case Caption: Mark C. Boyles As Personal Representative Of The Estate Of Grace Laver , plaintiff, et al VS Ncp Bayou, Llc
Case Number: 2023CP2700001
Type: Order/Consent Order

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2023-10-02 10:02:25 page 3 of 3

STATE OF SOUTH CAROLINA)
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)
 COUNTY OF JASPER)
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 Mark C. Boyles)
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 Plaintiff,)
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 vs.)
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 NCP Bayou, LLC)
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 Defendant(s).)
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IN THE COURT OF COMMON
 PLEAS FOR THE FOURTEENTH
 JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2023-CP-27-00001

**MEMORANDUM OF LAW
 IN OBJECTION TO
 MOTION TO DISMISS**

The Plaintiff has filed an objection to the Defendant’s Motion to Dismiss this lawsuit. This objection is based two grounds:

- (1) The Plaintiff is not suing the Defendant for the for the unauthorized practice of law, and
- (2) The Defendant should not profit or benefit from the unauthorized practice of law by a third party.

Facts

For many years, the Plaintiff operated a business in Jasper County named Carolina Timber Inc. In that business, the Plaintiff obtained loans from Coastal States Bank secured by mortgages. During and after the recession of 2008, the Plaintiff fell into default in these debts and mortgages to the bank. On December 31, 2013, the Plaintiff executed a Confession of Judgement to Coastal States Bank to secure the performance of a modified repayment schedule. When the Plaintiff subsequently defaulted in that modified agreement. The Confession of Judgment was filed in the Jasper County Court of Common Pleas on March 27, 2018.

By deed dated October 31, 2016, the Plaintiff's late mother Grace M. Boyles attempted to convey two parcels of timber land in Jasper County to the Plaintiff, reserving life estate to herself. That deed was drafted, witnessed, notarized and recorded in the Jasper County Register of Deeds Office by a person who is not a lawyer. There was no licensed attorney involved in that transaction in order to supervise and approve this real estate transaction. The Plaintiff's mother died on December 5, 2021.

The above-mentioned Confession of Judgment was assigned to the Defendant NCP Bayou, LLC on December 5, 2017. The Defendant subsequently enforced the loans, mortgages and Confession of Judgment. By foreclosing and enforcing the judgment liens the mortgage or judgment liens on properties of the Plaintiff, the Defendant recovered \$297,500.00 dollars in one case and \$154,539.25 dollars in a separate case. The Defendant has obtained an Execution Against Property dated August 18, 2022, in order to enforce the Confession of Judgment lien on the properties allegedly conveyed to the Plaintiff by his late mother.

After the Plaintiff's overwhelming financial difficulties and default on the loans and mortgages, he filed a petition for relief under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the District of South Carolina on September 30, 2019, case #19-05116-dd. The Plaintiff received a discharge of all personal liability by order the U.S. Bankruptcy Court dated January 24, 2020.

1. **The Plaintiff is not alleging that the Defendant itself conducted the unauthorized practice of law.**

The Plaintiff in this case is not asserting a claim against the Defendant in contract or tort. The Plaintiff is not seeking money damages from the Defendant. This Declaratory Judgment is essentially a defense to the Defendant's actions to enforce a judgment lien on unimproved property in Jasper County.

The cases relied upon by the Defendant all involve direct allegations against the Defendant for conduct which constitutes the unauthorized practice of law. In the Franklin case, the Plaintiffs sued the non-lawyer Defendant for preparing a will and the power of attorney for a testator. The South Carolina Supreme Court found that this conduct did constitute the unauthorized practice of law. In that case, the Court denied restitution from the Defendant for his unauthorized practice of law. The Court held that there is no “private right of action” for unauthorized practice of law and therefore there could not be an award of damages. Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 873 (2007).

In the Linder case, the Plaintiffs sued an insurance adjuster for the unauthorized practice of law. The Court found that the insurance adjuster’s represented the Plaintiffs in a coverage dispute with the insurance company and advised the Plaintiffs on interpretation and enforcement of the insurance policy. The Court found that some of the actions performed by the Defendant insurance adjuster were legitimate, authorized conduct. The Court then remanded the case to the Circuit Court to determine how much compensation the Defendant insurance adjuster could receive for legal, authorized practices. Since there was no private right of action law, the Plaintiffs could not recover against the Defendant a monetary judgment.

In Hambrick case, the Plaintiffs sued the mortgage company for preparing loan-related documents without use of or supervision by an attorney and also failed to use a licensed attorney to close the loan. The trial court dismissed the lawsuit because there is no private right of action for the unauthorized practice of law. The South Carolina Court of Appeals affirmed that dismissal. Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 634 S.E.2d 5 (2006). Again, the appellate court held that there is not private right of action for the unauthorized practice of law.

Unlike the above cited cases, the Plaintiff is not suing the Defendant NCP Bayou, LLC for the unauthorized practice of law. There is no allegation in the complaint that any of the actions which involve the practice of law were conducted by employees, agents or representatives of NPC Bayou, LLC. The Plaintiff is, rather, asserting that the deed upon which the Defendant bases its Execution of Judgment action is invalid because it resulted from the unauthorized practice of law by a third party. The question before the Court in this case is whether the Defendant should be allowed to foreclose its judgment lien based on the unauthorized practice of law by a third party.

2. The Plaintiff does not believe that the Defendant NCP Bayou, LLC should profit or benefit from the unauthorized practice of law by a third party.

The Plaintiff is not asking the Court to rule that every deed prepared by a non-lawyer is void. The four cases cited by the Defendant on page 3 of its Memorandum involve sanctions against the perpetrator of an unauthorized practice of law. (See Helton, Deddish, Easler and Buyer Service). The Plaintiff believes that these four cases do not hold that all deeds created by unauthorized practitioners of law are valid.

On page 4 of the Defendant's Memorandum, the Defendant cites three cases in which a South Carolina Court has found the unauthorized practice of law, but the Court chose not to declare deeds thereby created to be a nullity or void. In the Brown case Judge Duffey, in the South Carolina DSC, ruled that an arbitration agreement did not require legal scholarship or supervision. In that case, the federal court did not declare that all deeds created in the unauthorized practice of law are valid. Brown v. Citifinancial, Inc., 414 F. Supp. 2d 561, 565 (DSC, 2006). In the Franklin case, the South Carolina Court found that disallowance of fees for actions that constituted the unauthorized practice of law was an appropriate remedy. Franklin v. Chavis, 271 S.C. 522, 690, S.E. 2d 873 (2007). In the Linder case, the Court ruled that some of the actions undertaken by the insurance adjuster company were void and the adjuster company

would not be compensated or benefited from that work. Linder v. Ins. Claims, 348 S.C. 977,560 S.E. 2d 612 (2002).

On pages 4 and 5 of its Memorandum, the Defendant cited four cases in which some actions of a party conducting the unauthorized practice of law were not voided. In the Brown v. Coe case, the Court ruled that filing an appeal by a non-lawyer constituted the unauthorized practice law. Nevertheless, the Court allowed the party to hire an attorney in that case and go forward. The case was not dismissed. Brown v. Coe, 365 S.C. 137, 616 S.E. 2d 705, order clarified, 365 S.E. 664, 620 S.E. 2d 323 (2005). In the Roof Doctor case, the Court authorized a company to be represented by a non-lawyer in Magistrate Court. Again, there was no dismissal of the Plaintiff's case. The Roof Doctor., Inc. v. Birchwood Holdings, Ltd., 366, S.C. 637, 622 S.E. 2d 746, (Ct. App. 2005). In the Renaissance case, the South Carolina Supreme Court held that a non-lawyer shareholder could not represent a corporation on appeal. Again, there is no voiding of a deed. In that case, the Court found the appropriate remedy was to remand the case for further proceedings. Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 515 S.E. 2d 257, (1999). In the Blue Star case, the Court again held that a corporation could not be represented in a case in which the Complaint was drafted and filed by the non-lawyer president of the corporation. In that case, the Court ruled that the more appropriate remedy was to remand, amend the pleadings with lawyer representation and proceed to a new trial. Blue Star Rental & Sales, Inc. v. Bridge Env't, LLC, 2014 WL 697, 7616 (S.C. Supreme Court, 2014). (This case was not reported in S.E. 2d). In these cases cited by the Defendant the proceedings and documents were not voided and the cases were not dismissed. On the other hand, the Court found "amendable defects." None of these cases ruled that deeds prepared by a non-lawyer are never voided.

In this case, the Plaintiff is not arguing that all deeds drafted by a non-lawyer are void as a matter of law. The Plaintiff is raising the issue of the unauthorized practice of law as a defense to

the Defendants enforcement of a previously recorded Confession of Judgement. In a recent case, Judge Childs, U.S. District Court, stated that the unauthorized practice of law acts as a bar (or defense, to foreclosure). Hosey v. Quicken Loans Inc., 2018 WL 3216105 (U.S.D.C. South Carolina, 2018).

The Plaintiff in this declaratory action is asserting an equitable defense to the actions undertaken by the Defendant in reliance on a legal document created through the unauthorized practice of law. It is a recognized maxim that equity will not suffer a wrong to be without a remedy. See South Carolina Jurisprudence (SC Bar 1992), "Equity Maxims", § 8 at page 8).

The Plaintiff is entitled to a Declaratory Judgement in this matter pursuant to S.C. Code §15-53-30 (1976). Under this statute "any person interested under a deed...may have determined any question of construction or validity arising under the instrument..." The Plaintiff believes that the Defendant should not be enriched through the unauthorized practice of law by a third-party. Under the Declaratory Judgment Statute, this Court has the authority to declare the rights of the parties in this case and not any other parties.

CONCLUSION

The Plaintiff is not asserting a private cause of action against the Defendant for the unauthorized practice of law. The Plaintiff has nowhere alleged that the Defendant itself engaged in the unauthorized practice of law. Nor is the Plaintiff alleging that every deed created through the unauthorized practice of law should be null and void. On the other hand, the Plaintiff is entitled to declaratory relief when the Defendant seeks to profit or be enriched as the result of the unauthorized practice of law. If the trial court feels that it does not have jurisdiction to determine whether the deed in question resulted from the unauthorized practice of law, this court could stay these proceedings and allow the Plaintiff to seek a determination of the unauthorized practice of law in the original jurisdiction of South Carolina Supreme Court. The Plaintiff does not believe this is

necessary since it is not asserting a private cause of action against the Defendant for the unauthorized practice of law.

October 11, 2023
Charleston, South Carolina

s/F. Truett Nettles, II
F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
SC Bar#: 4195
(843) 577-6726
t Nettles@rosenhagood.com
Attorney for the Plaintiff

South Carolina that a deed prepared by a non-lawyer is null and void. Furthermore, Plaintiff's Opposition Memo fails to cite a single case in support of the allegations in its Complaint.

1. Plaintiffs' Complaint Fails to State a Claim Because as a Matter of Law There Is No Private Cause of Action for the UPL.

It is undisputed that there is no private cause of action for UPL in South Carolina. *See e.g. Franklin v. Chavis*, 371 S.C. 527, 535, 640 S.E.2d 873, 877 (2007). Here, there is no question that charges of UPL are the basis for Plaintiffs' declaratory judgment cause of action. Specifically, Plaintiffs are seeking a determination by this Court that the deed granting Boyles a property interest in the Subject Property is null and void due to the alleged fact that it was drafted, witnessed, notarized, and filed in the public record by a non-attorney. Based on this determination, Plaintiffs are then asking the Court to declare that Defendant's judgment lien does not attach to the Subject Property due to the invalidity of the underlying deed based on the UPL. These claims constitute a private cause of action for the UPL, which does not exist under South Carolina law. *See Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 123-24, 634 S.E.2d 5, 8-9 (Ct. App. 2006) (affirming dismissal of complaint when charges of UPL were the basis for all alleged causes of action because no private cause of action for UPL of law exists.).

2. Plaintiffs' Complaint Fails to State a Claim Because it is Not the Law of This State that a Deed Prepared in Connection with the UPL is Null and Void.

Plaintiff's Opposition Memo fails to set forth any case in support of its position that a deed prepared in connection with the UPL is null and void. Instead, Plaintiff continuously points out that all of the cases cited throughout its Opposition Memo and NCP's Memo explicitly do not hold that deeds or other documents prepared in connection with the UPL are null and void. This argument only further supports NCP's position that Plaintiff's Complaint fails to state a claim

because Plaintiff's entire suit is based upon the erroneous position that a deed prepared in connection with the UPL is null and void as alleged in Paragraph 17 of Plaintiff's Complaint.

South Carolina case law provides that a party who committed the UPL is barred from acting in equity to enforce any document prepared in connection with its UPL. *Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011) ("a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by law"). The South Carolina District Court was explicitly relying on that principle in *Hosey v. Quicken Loans Inc.*, when it stated in dicta that UPL "acts as a bar (or defense) to foreclosure." *Hosey v. Quicken Loans, Inc.*, 2018 WL 3216105, at *3 (D.S.C. July 2, 2018). Here, it is undisputed that NCP did not commit the UPL and is merely a third-party attempting to enforce its right to enforce its judgment against Mark Boyles as a matter of law, not in equity. Thus, the dicta stated in *Hosey* has no impact on this matter.

CONCLUSION

Here, there is no justiciable controversy to be resolved because the underlying deed to the Subject Property is not null and void due to its alleged connection with the UPL. Plaintiffs' conclusion regarding the validity of the underlying deed is incorrect as a matter of law. Therefore, there is no longer a question of whether Defendant's judgment lien attaches to the Subject Property pursuant to S.C. Code Ann. § 15-35-810. Accordingly, Plaintiffs' Complaint must be dismissed pursuant to Rule 12(b)(6), SCRPC.

Hilton Head Island, South Carolina
October 19, 2023

RUSSELL P. PATTERSON, P.A.
By: /s/ Lauren P. Williams
Lauren P. Williams (S.C. #102341)
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
lauren@russellpattersonlaw.com
Attorneys for the Defendant

LEGAL ARGUMENT

Assuming, for the purposes of this Motion only, Plaintiffs' allegation that the underlying deed to the Subject Property was prepared in connection with the unauthorized practice of law ("UPL") is correct, Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and must be dismissed. Plaintiffs' Complaint fails to establish a justiciable controversy exists because as a matter of law there is no private cause of action for the unauthorized practice of law, and it is not the law of South Carolina that a deed prepared by a non-lawyer is null and void.

1. Plaintiffs' Complaint Fails to State a Claim Because as a Matter of Law There Is No Private Cause of Action for the UPL.

It is well established in South Carolina there is no private cause of action for the unauthorized practice of law. *Franklin v. Chavis*, 371 S.C. 527, 535, 640 S.E.2d 873, 877 (2007) ("There is no private right of action in South Carolina for the unauthorized practice of law." (citing *Linder v. Insurance Claims Consultants, Inc.*, 348 S.C. 477, 496-97, 560 S.E.2d 612, 622-23 (2002)); *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 123-24, 634 S.E.2d 5, 8-9 (Ct. App. 2006) (affirming dismissal of complaint when charges of unauthorized practice of law were the basis for all alleged causes of action because no private cause of action for the unauthorized practice of law exists.)).

Here, there is no question that charges of unauthorized practice of law are the basis for Plaintiffs' declaratory judgment cause of action. Specifically, Plaintiffs are seeking a determination by this Court that the deed granting Boyles a property interest in the Subject Property is null and void due to the alleged fact that it was drafted, witnessed, notarized, and filed in the public record by a non-attorney. Based on this determination, Plaintiffs are then asking the Court to declare that Defendant's judgment lien does not attach to the Subject Property because of the invalidity of the underlying deed arising out of the unauthorized practice of law. These claims

constitute a private cause of action for the unauthorized practice of law, which does not exist under South Carolina law. Accordingly, Plaintiffs' Complaint must be dismissed for failure to state a valid claim as a matter of law.

2. Plaintiffs' Complaint Fails to State a Claim Because it is Not the Law of This State that a Deed Prepared in Connection with the UPL is Null and Void.

Throughout South Carolina case law there are multiple cases answering the question of what constitutes the unauthorized practice of law. *See, e.g. In re Helton*, 372 S.C. 245, 249, 642 S.E.2d 573, 575 (2007) (failure of attorney to supervise preparation of deeds by non-lawyer assistants constituted unauthorized practice of law); *In re Deddish*, 347 S.C. 614, 617, 557 S.E.2d 655, 657 (2001) (preparation of real estate deeds by non-lawyer constituted the unauthorized practice of law); *State v. Buyers Serv. Co.*, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987) (preparation of a deed falls within the definition of the practice of law and may constitute the unauthorized practice of law); *In re Easler*, 275 S.C. 400, 272 S.E.2d 32 (1980) (holding that the preparation of a deed for another constitutes the unauthorized practice of law). These cases cite case law that specifically addresses whether the preparation of a deed by a non-lawyer constitutes the unauthorized practice of law. *See supra*. However, there is not a single case in South Carolina holding that a deed prepared in connection with the unauthorized practice of law is null and void.

If the South Carolina Supreme Court wanted to establish that a deed prepared in connection with the unauthorized practice of law is null and void, the Court would and could explicitly state as a matter of law that a deed prepared by a non-lawyer constitutes the unauthorized practice of law and is void. The fact that not a single case that addresses the unauthorized practice of law in the preparation of deeds holds that the resulting deed is null and void. This is not the law of our state.

However, South Carolina case law does establish that a party who committed the UPL is barred from enforcing any document prepared in connection with its UPL as a matter of equity. *Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011) (“a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by law”). The South Carolina District Court explicitly relied on that principle in *Hosey v. Quicken Loans Inc.*, when it stated that the UPL “acts as a bar (or defense) to foreclosure.” *Hosey v. Quicken Loans, Inc.*, 2018 WL 3216105, at *3 (D.S.C. July 2, 2018). Here, it is undisputed that Defendant NCP did not commit the UPL and is merely a third-party attempting to enforce its right to enforce its judgment against Mark Boyles as a matter of law, not in equity. Thus, the dicta stated in *Hosey* has no impact on this matter.

Accordingly, there is no justiciable controversy to be resolved because the underlying deed to the Subject Property is not null and void due to its alleged connection with the unauthorized practice of law. Plaintiffs’ conclusion regarding the validity of the underlying deed is incorrect as a matter of law. Therefore, there is no longer a question of whether Defendant’s judgment lien attaches to the Subject Property. S.C. Code Ann. § 15-35-810 (final judgments shall constitute a lien upon the real estate of the judgment debtor situate in the county in which the judgment is recorded). Accordingly, Plaintiffs’ Complaint must be dismissed pursuant to Rule 12(b)(6), SCRPC.

Therefore, Defendant’s Motion is Granted, and this matter is Dismissed.

AND IT IS SO ORDERED.

Signature page to follow



Jasper Common Pleas

Case Caption: Mark C. Boyles, Individually , plaintiff, et al VS Ncp Bayou, Llc
Case Number: 2023CP2700001
Type: Order/Dismissal

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2023-12-21 10:42:51 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS FOR THE FOURTEENTH
	)	JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CIVIL ACTION NO.: 2023-CP-27-0001
)	
Mark C. Boyles, Individually and as)	
Personal Representative of the Estate)	
of Grace Laverne Boyles)	
	)	MOTION TO RECONSIDER
Plaintiff,	)	ORDER OF DISMISSAL
)	
vs.)	
)	
NCP Bayou, LLC)	
)	
)	
Defendant(s).)	
)	

By order of this Court dated December 21, 2023, this case was dismissed. Pursuant to Rule 59 of the South Carolina Rules of Civil Procedures, the Plaintiff moves before this Court to reconsider that final order or alter or amend the order to allow further and full litigation of this Declaratory Judgement. The Plaintiff bases this motion on two grounds: (1) the Plaintiff is NOT suing the Defendant NCP Bayou, LLC for the unauthorized practice of law and (2) the South Carolina Supreme Court has ruled that legal actions or documents created in the unauthorized practice of law are not enforceable.

In the first section of the Order of Dismissal, on page 2, the Court sites three cases for the proposition that there is no private right or cause of action against another party for the unauthorized practice of law. The Plaintiff agrees with that statement of law. In those three cases, the Defendants had engaged in the unauthorized practice of law. In the Hambrick, the Plaintiffs did not allege the unauthorized practice of law. They alleged breach of contract, breach of contract followed by a fraudulent act, fraud, constructive fraud, civil conspiracy, and a claim for accounting. The South Carolina Court of Appeals concluded that all of these claims were based upon the

unauthorized practice of law by the Defendant GMAC Mortgage Corporation. Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 634 S.E. 2d 5 (Ct. App. 2006).

In this case, the Plaintiff has not alleged or accused the Defendant NCP Bayou, LLC of the unauthorized practice of law itself, or by any agent or employee of the Defendant. In this case, the Plaintiff is seeking to prohibit the enforcement of a judgement lien by the Defendant when that lien is based upon the unauthorized practice of law by a third party. The Plaintiff is not asserting a cause of action in contract or tort against the Defendant NCP Bayou, LLC for damages arising from the Defendant's wrongful actions. Rather, the Plaintiff is seeking a Declaratory Judgement that there is no lawful basis for the Defendant's judgement lien. The Plaintiff is simply seeking a Declaratory Judgement concerning the construction and validity of the deed upon which the Defendant relies to pursue its foreclosure. The Plaintiff is informed and believes that it has a right to a Declaratory Judgement pursuant to SC Code Section 15-53-30 (2022).

In section two of the order, on page three, the Court sites four cases in which the South Carolian Supreme Court found that the unauthorized practice of law had occurred. In the Helton case, which was a disciplinary action against an attorney for the unauthorized practice of law, the Court suspended Helton from the practice of law. In re Helton, 372 S.C. 245, 642 S.E. 2d 573 (2007). There was no holding regarding the validity of the Defendant's legal actions. In the Deddish case, another disciplinary action against an attorney, the Order of the South Carolina Supreme Court was to suspend that lawyer from the practice of law for nine months. Again, there was no discussion of the validity of the actions undertaken by that Defendant. In re Deddish, 347 S.C. 614, 557 S.E. 2d 655 (2001). In the Easler case, another disciplinary action, the Defendant was found to be practicing law after having been disbarred previously. The Supreme Court ordered that the attorney be imprisoned in the Richland County Jail for a period of thirty days for contempt of court for violating the previous order of disbarment. In re Easler, 275 S.C. 400, 272 S.E. 2d 32 (1980). In the Buyers Service case, the South Carolina Supreme Court found that a commercial title company was

engaged in the unauthorized practice of law. In that case, the Supreme Court set forth which actions will, or will not, constitute the unauthorized practice of law. Again, there was no discussion of whether or not the previous activities of Buyers Service were valid and enforceable. State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E. 2d 15 (1987). In all of these cases, the issue about the validity and enforceability of real estate closings was not before the Court and there was no finding that deeds and mortgages created, executed and recorded in the unauthorized practice of law would be valid.

On the contrary, the South Carolina Supreme Court found that Matrix Financial Services Corporation could not enforce its mortgage refinancing because it occurred by and through the unauthorized practice of law. Justice Kittredge stated in his concurring opinion that the holding in the case essentially voided the real estate mortgage refinance secured through unauthorized practice of law. Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E. 2d 532 (2011).

On page 4 of this court's Order, the Court discusses the Hosey case. Judge Childs, U.S. District Judge, states that a complaint against a party for the unauthorized practice of law should be brought in the original jurisdiction of the South Carolina Supreme Court. Hosey v. Quicken Loans, Inc., (U.S. District Court, South Carolina, 2018 WL 3216105). Judge Childs does say that the unauthorized practice of law acts as a bar (or defense) to foreclosure. Hosey supra, at page 3. While that decision of the U.S. District Court is not binding on this state court, the Plaintiff believes that it is a correct interpretation and application of South Carolina law.

In conclusion, the Plaintiff has not brought this action against the Defendant NCP Bayou, LLC for the unauthorized practice of law. As set forth its Complaint, the Plaintiff seeks a Declaratory Judgement that the deed to the Plaintiff is not enforceable because it was not drafted, witnessed, notarized or filed in the public record by a person authorized to practice law in South Carolina. Further, there are cases in South Carolina where the Court has ruled that real estate transaction documents created by a person who is not licensed to practice law in

South Carolina are unenforceable. Matrix, *supra*. Therefore, the Plaintiff prays that this Court deny the Motion to Dismiss and allow this case to proceed for a full development of the facts. The Plaintiff believes that allowing the Defendant to profit and benefit from the illegal actions of a third party should not be endorsed or condoned by this Court.

Respectfully submitted,

December 28, 2023
Charleston, South Carolina

s/F. Truett Nettles, II
F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
tnettles@rosenhagood.com
Attorney for the Plaintiff
SC Bar No. 4195

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Jasper
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2700001

Mark C Boyles
PLAINTIFF(S)

Ncp Bayou, Llc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on Plaintiff's Motion to Reconsider. After careful review of the pleadings, motions, and memoranda submitted in this matter, this Court respectfully DENIES the motion to reconsider. AND IT IS SO ORDERED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/26/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Jasper Common Pleas

Case Caption: Mark C. Boyles, Individually , plaintiff, et al VS Ncp Bayou, Llc

Case Number: 2023CP2700001

Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2024-02-26 13:37:27 page 3 of 3

RECEIVED
Mar 20 2024
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY

Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2023-CP-27-00001

Mark C. Boyles,.....Appellant,

v.

NCP Bayou, LLC,.....Respondent.

NOTICE OF APPEAL

Mark C. Boyles appeals the Order of Dismissal by the Honorable Alison Renee Lee dated December 21, 2023. Appellant received written notice of the denial of his Motion to Reconsider by order dated February 26, 2024.

Respectfully submitted,

March 20, 2024

/s/ F. Truett Nettles, II
F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 266-8122
Attorney for the Appellant

Other Counsel of Record:
Lauren P. Williams
Russell P. Patterson, P.A.
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
Attorney for Respondent

RECEIVED
Mar 20 2024
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM JASPER COUNTY

Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2023-CP-27-00001

Mark C. Boyles,.....Appellant,

v.

NCP Bayou, LLC,.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on NCP Bayou, LLC by depositing a copy in the U.S. mail postage prepaid on March 20, 2024, addressed to its attorney of record Lauren P. Williams, at P.O. Drawer 8047 Hilton Head Island, SC 29938, and by email.

Respectfully submitted,

March 20, 2024

/s/ F. Truett Nettles, II
F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 266-8122
Attorney for the Appellant

RECEIVED

Mar 20 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
)
 Mark C. Boyles,)
)
 PLAINTIFF,)
)
 vs.)
)
 NCP Bayou, LLC,)
)
 DEFENDANT.)
 _____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-27-0001

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

ELECTRONICALLY FILED - 2023 Dec 21 1:54 PM - JASPER - COMMON PLEAS - CASE#2023CP2700001

This matter came before the Court by WebEx on September 28, 2023, on Defendant NCP Bayou, LLC's Motion to Dismiss, dated July 19, 2023 ("Motion"). Present at the hearing were F. Truett Nettles, II, Esq. for Plaintiff and Lauren Williams, Esq. for Defendant. Based on the pleadings submitted to the Court, including Plaintiff's Objection to Motion to Dismiss, dated September 27, 2023; Defendant's Memorandum in Support, dated September 28, 2023; Plaintiff's Memorandum in Opposition, dated October 11, 2023; and Defendant's Reply Memorandum, dated October 19, 2023; and for the reasons stated below, Defendant's Motion is granted, and this matter is dismissed.

LEGAL STANDARD

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss a complaint where the plaintiff fails to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869, 874 (2006). The court should dismiss a complaint when "the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff, would not entitle the plaintiff to relief of any theory." *See Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

LEGAL ARGUMENT

Assuming, for the purposes of this Motion only, Plaintiffs' allegation that the underlying deed to the Subject Property was prepared in connection with the unauthorized practice of law ("UPL") is correct, Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and must be dismissed. Plaintiffs' Complaint fails to establish a justiciable controversy exists because as a matter of law there is no private cause of action for the unauthorized practice of law, and it is not the law of South Carolina that a deed prepared by a non-lawyer is null and void.

1. Plaintiffs' Complaint Fails to State a Claim Because as a Matter of Law There Is No Private Cause of Action for the UPL.

It is well established in South Carolina there is no private cause of action for the unauthorized practice of law. *Franklin v. Chavis*, 371 S.C. 527, 535, 640 S.E.2d 873, 877 (2007) ("There is no private right of action in South Carolina for the unauthorized practice of law." (citing *Linder v. Insurance Claims Consultants, Inc.*, 348 S.C. 477, 496-97, 560 S.E.2d 612, 622-23 (2002)); *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 123-24, 634 S.E.2d 5, 8-9 (Ct. App. 2006) (affirming dismissal of complaint when charges of unauthorized practice of law were the basis for all alleged causes of action because no private cause of action for the unauthorized practice of law exists.)).

Here, there is no question that charges of unauthorized practice of law are the basis for Plaintiffs' declaratory judgment cause of action. Specifically, Plaintiffs are seeking a determination by this Court that the deed granting Boyles a property interest in the Subject Property is null and void due to the alleged fact that it was drafted, witnessed, notarized, and filed in the public record by a non-attorney. Based on this determination, Plaintiffs are then asking the Court to declare that Defendant's judgment lien does not attach to the Subject Property because of the invalidity of the underlying deed arising out of the unauthorized practice of law. These claims

constitute a private cause of action for the unauthorized practice of law, which does not exist under South Carolina law. Accordingly, Plaintiffs' Complaint must be dismissed for failure to state a valid claim as a matter of law.

2. Plaintiffs' Complaint Fails to State a Claim Because it is Not the Law of This State that a Deed Prepared in Connection with the UPL is Null and Void.

Throughout South Carolina case law there are multiple cases answering the question of what constitutes the unauthorized practice of law. *See, e.g. In re Helton*, 372 S.C. 245, 249, 642 S.E.2d 573, 575 (2007) (failure of attorney to supervise preparation of deeds by non-lawyer assistants constituted unauthorized practice of law); *In re Deddish*, 347 S.C. 614, 617, 557 S.E.2d 655, 657 (2001) (preparation of real estate deeds by non-lawyer constituted the unauthorized practice of law); *State v. Buyers Serv. Co.*, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987) (preparation of a deed falls within the definition of the practice of law and may constitute the unauthorized practice of law); *In re Easler*, 275 S.C. 400, 272 S.E.2d 32 (1980) (holding that the preparation of a deed for another constitutes the unauthorized practice of law). These cases cite case law that specifically addresses whether the preparation of a deed by a non-lawyer constitutes the unauthorized practice of law. *See supra*. However, there is not a single case in South Carolina holding that a deed prepared in connection with the unauthorized practice of law is null and void.

If the South Carolina Supreme Court wanted to establish that a deed prepared in connection with the unauthorized practice of law is null and void, the Court would and could explicitly state as a matter of law that a deed prepared by a non-lawyer constitutes the unauthorized practice of law and is void. The fact that not a single case that addresses the unauthorized practice of law in the preparation of deeds holds that the resulting deed is null and void. This is not the law of our state.

However, South Carolina case law does establish that a party who committed the UPL is barred from enforcing any document prepared in connection with its UPL as a matter of equity. *Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011) (“a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by law”). The South Carolina District Court explicitly relied on that principle in *Hosey v. Quicken Loans Inc.*, when it stated that the UPL “acts as a bar (or defense) to foreclosure.” *Hosey v. Quicken Loans, Inc.*, 2018 WL 3216105, at *3 (D.S.C. July 2, 2018). Here, it is undisputed that Defendant NCP did not commit the UPL and is merely a third-party attempting to enforce its right to enforce its judgment against Mark Boyles as a matter of law, not in equity. Thus, the dicta stated in *Hosey* has no impact on this matter.

Accordingly, there is no justiciable controversy to be resolved because the underlying deed to the Subject Property is not null and void due to its alleged connection with the unauthorized practice of law. Plaintiffs’ conclusion regarding the validity of the underlying deed is incorrect as a matter of law. Therefore, there is no longer a question of whether Defendant’s judgment lien attaches to the Subject Property. S.C. Code Ann. § 15-35-810 (final judgments shall constitute a lien upon the real estate of the judgment debtor situate in the county in which the judgment is recorded). Accordingly, Plaintiffs’ Complaint must be dismissed pursuant to Rule 12(b)(6), SCRPC.

Therefore, Defendant’s Motion is Granted, and this matter is Dismissed.

AND IT IS SO ORDERED.

Signature page to follow



Jasper Common Pleas

Case Caption: Mark C. Boyles, Individually , plaintiff, et al VS Ncp Bayou, Llc
Case Number: 2023CP2700001
Type: Order/Dismissal

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2023-12-21 10:42:51 page 5 of 5

STATE OF SOUTH CAROLINA
COUNTY OF Jasper
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2700001

Mark C Boyles
PLAINTIFF(S)

Ncp Bayou, Llc
DEFENDANT(S)

- DISPOSITION TYPE (CHECK ONE)**
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
 - STAYED DUE TO BANKRUPTCY**
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on Plaintiff's Motion to Reconsider. After careful review of the pleadings, motions, and memoranda submitted in this matter, this Court respectfully DENIES the motion to reconsider. AND IT IS SO ORDERED.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/26/2024 .

RECEIVED

Mar 20 2024

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Feb 26 2:43 PM - JASPER - COMMON PLEAS - CASE#2023CP2700001

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Jasper Common Pleas

Case Caption: Mark C. Boyles, Individually , plaintiff, et al VS Ncp Bayou, Llc
Case Number: 2023CP2700001
Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2024-02-26 13:37:27 page 3 of 3

ELECTRONICALLY FILED - 2024 Feb 26 2:43 PM - JASPER - COMMON PLEAS - CASE#2023CP2700001

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT
COUNTY OF JASPER) C.A. NO. 2023-CP-27-0001

MARK C. BOYLES)
Plaintiff,)
versus)
NCP BAYOU, LLC)
Defendant.)

H E A R I N G

DATE: September 28, 2023
TIME:
LOCATION: South Carolina Circuit Court 14
JUDGE: Alison Renee Lee

TRANSCRIBED BY: Lynda Monroe

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

APPEARANCES:

F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, South Carolina 29401

Attorney for the Plaintiff,

Lauren Williams, Esq.
Russell P. Patterson, PA
PO Box 8047
Hilton Head Island, South Carolina 29938

Attorney for the Defendant.

INDEX

Certificate of Transcriber..... 15

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1

PROCEEDING

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3

4

THE COURT: Okay. We are here on Mark Boyles, as personal representative of the estate of Grace Labor, versus NCP Bayou; is that correct?

5

MS. WILLIAMS: Yes, Your Honor.

6

THE COURT: We're here on a motion to dismiss.

7

MS. WILLIAMS: Yes, Your Honor. That is my motion.

8

I'm Lauren Williams. I represent the Defendant, NCP Bayou,

9

LLC. And we filed our motion to dismiss. I also filed a

10

memo in support. I filed it yesterday but it was rejected

11

because I had the wrong case number at the top. I don't

12

believe that it has yet been approved by the Court but it is

13

pending and I'm happy to e-mail Your Honor a copy. I know

14

Mr. Nettles has received a copy as well.

15

THE COURT: If you would, please, e-mail it to me and

16

I'll have a chance to review it.

17

MS. WILLIAMS: Of course, Your Honor.

18

And so our motion to dismiss had two parts. The first

19

part was to dismiss Mark C. Boyles as personal representative

20

of the Estate of Grace Laverne Boyles. I believe that Mr.

21

Nettles and I have reached a resolution on that part as an

22

estate for Grace Laverne Boyles has not yet been opened.

23

This case was filed, I think it looks like it was the first

24

case that was filed in Jasper County this year. I think the

25

Boyles family has run into some issues with opening Ms.

1 Grace's estate.

2 So we've agreed that Mr. Boyles, in his capacity as
3 personal representative of the estate, will be dismissed and
4 we can -- I'm happy to grant them leave. That in the event a
5 personal representative is appointed, they can certainly
6 petition to be added back to the case.

7 MR. NETTLES: I agree, Your Honor.

8 MS. WILLIAMS: The second part of our motion is to
9 dismiss Plaintiff's case in its entirety pursuant to Rule
10 12(b)(6). Your Honor, I'll try to keep this relatively brief
11 but it is a unique argument that Plaintiff has put forth in
12 its complaint that we are seeking to dismiss. And so this is
13 a declaratory judgment action filed by Plaintiff arising out
14 of the Defendant's efforts to collect a Jasper County
15 judgment lien against real property that is owned by the
16 Plaintiff, Mark Boyles, individually, in Jasper County.

17 As a result of Defendant's collection efforts,
18 Plaintiff filed the instant suit alleging that a distinctable
19 (phonetically) controversy exists regarding Defendant's
20 ability to see then sell the subject property based on
21 Plaintiff's allegation that the deed awarding or, I guess,
22 conveying a property interest in the subject property to Mr.
23 Boyles was prepared by a non-lawyer.

24 The Plaintiff alleges that because this deed was
25 prepared by a non-lawyer. That constitutes the unauthorized

1 practice of law and, therefore, the underlying deed is null
2 and void and Mr. Boyles does not have an ownership interest
3 in the subject property.

4 So our position that Plaintiff's case should be
5 dismissed in its entirety for two reasons. As you know, Your
6 Honor, in a motion to dismiss I have to -- the nonmoving
7 party has to accept all the facts that are alleged in
8 Plaintiff's complaint as true. So I'm assuming, for the
9 purposes of this motion, that the deed in question was
10 prepared by a non-lawyer and that constitutes the
11 unauthorized practice of law.

12 First, it's our position that Plaintiff's complaint
13 should be dismissed on the first ground that there's a no --
14 there's no private cause of action to the unauthorized
15 practice of law in South Carolina. This principal is well
16 established, in both cases, from the South Carolina Supreme
17 Court and the Court of Appeals.

18 Specifically, the Court of Appeals affirms the
19 dismissal of a complaint when charges of unauthorized
20 practice of law were the basis for all alleged causes of
21 action because, again, there's no private cause of action for
22 the unauthorized practice of law and that is in *Hambrick*
23 *versus GMAC Mortgage Corporation*. (Inaudible) like I said
24 just a few minutes ago there's no question that charges of
25 unauthorized practice of law are the entire basis for

1 Plaintiff's declaratory judgment cause of action. Plaintiffs
2 are specifically seeking a determination by this Court. That
3 the deed to the subject property is null and void due to its
4 connection with the unauthorized practice of law. These
5 claims constitute a private cause of action for the
6 unauthorized practice of law which, like I said, does not
7 exist under South Carolina law.

8 Judge, our position that on that first basis
9 Plaintiff's complaint must be dismissed for failure to state
10 a claim as a matter of law. Additionally, it's Plaintiff's
11 position that it's not South Carolina law. That a deed
12 prepared by a non-lawyer is null and void. In fact, we
13 believe that's the opposite of what South Carolina law is.

14 Throughout all of our case law there are multiple cases
15 specifically addressing whether the preparation of a deed by
16 a non-lawyer constitutes the unauthorized practice of law.
17 In my brief I cite at least four cases where this issue is
18 considered by the South Carolina Supreme Court. However,
19 there's not a single case, including those four cases, where
20 a South Carolina court went on to continue to hold that a
21 deed prepared in connection with an unauthorized practice of
22 law was null and void. To date, Plaintiff has not provided
23 any such case that holds that.

24 When our courts have been faced with a decision about
25 the validity of other documents prepared in connection with

1 the unauthorized practice of law, our courts have explicitly
2 held that these documents remain valid. Specifically in
3 *Franklin versus Chavez*, a 2007 Supreme Court case, the Court
4 ruled that a will drafted by an individual engaged in the
5 unauthorized practice of law still remain valid. Similarly,
6 in *Brown versus CitiFinacial*, a 2006 South Carolina district
7 court case, the Court ruled that the arbitration agreement
8 contained in a mortgage prepared in connection with the
9 unauthorized practice of law was not void due to the actions
10 of the preparer and, instead, was enforceable.

11 Finally, in *Linders versus Insurance Claims Consultant*,
12 a 2002 South Carolina Supreme Court case, the Court ruled,
13 again, that a contract that the Court had deemed that as
14 performed the contract amounted to the partial unauthorized
15 practice of law but the Court ruled that that contract, also,
16 was not null and void due to the unauthorized practice of law
17 and, instead, remained enforceable.

18 Our courts are not in the practice of avoiding
19 instruments that are prepared by a party engaged in the
20 unauthorized practice of law. Similarly, South Carolina Code
21 Section 3530(b) outlines the requirement for recording a deed
22 which as I'm sure Your Honor knows, the deed has to be signed
23 by the grantor, acknowledged by two witnesses and be
24 notarized.

25 In that statute and in all other statutes governing how

1 to prepare deeds, there's no requirement that the deed must
2 be prepared by a licensed attorney.

3 Finally, this lawsuit is an attempt, by Plaintiff, to
4 void a valid judgment through its own bad act. Plaintiff has
5 had an ownership interest in the property since 2016. The
6 only reason the Plaintiff is trying to set aside this deed is
7 so that he could allegedly obtain title to the subject
8 property through his mother's estate. Because his mother was
9 the prior owner of the property, the deed to him is deemed
10 invalid, it would go back to his mother who is Grace Laverne
11 Boyles who is recently passed away and then Mr. Boyles could
12 still obtain title to this property allegedly free and clear
13 of our valid judgment lien, which is why he is trying to
14 asset this action.

15 So for all the reasons I just discussed, it's our
16 opinion that there's no distinctable controversy to be
17 resolved because the underlying deed to the subject property
18 is not null and void due to its alleged connections with the
19 unauthorized practice of law under South Carolina law.

20 Plaintiff's conclusion regarding the invalidity of the
21 deed is incorrect, as a matter of law, and, therefore,
22 there's no question for a Court to decide regarding whether
23 Defendant's lien attaches to the subject property and this
24 matter should be dismissed in its entirety.

25 THE COURT: Mr. Nettles?

1 MR. NETTLES: Thank you, Your Honor. I received this
2 memo of law from Ms. Williams at 9 o'clock this morning. So
3 I haven't had a chance to read all of her cases. I'm getting
4 feedback here.

5 I would like an opportunity to submit a memorandum of
6 law. We disagree with the two arguments. There are many
7 cases in South Carolina about unauthorized practice of law.
8 In *State v Beyers Service* in 1987, Justice (inaudible) went
9 over all these things (inaudible) unauthorized practice of
10 law and that would be preparation of the legal document,
11 judgment (inaudible) title abstract, real estate closings,
12 reporting of the deed.

13 In this case, the deed in question was from my client's
14 mother. She deeded him some timber land and reserved, to
15 herself, (inaudible) and a remainder to my client. That deed
16 was prepared by a non-lawyer, it was drafted by a non-lawyer,
17 it was witnessed, it was notarized and it was recorded by a
18 non-lawyer. So I don't think (inaudible) question of fact
19 and, of course, you'll have some discovery in this case
20 (inaudible) it's not deniable that this deed was created and
21 recorded by a non-lawyer.

22 I think the (inaudible) there's no private cause of
23 action. I think there have been changes where somebody
24 (inaudible) because of an invalid legal document prepared by
25 a non-lawyer. The *State v Beyers Service* cited by the

1 Plaintiff on page 3 of her memo says, specifically, that
2 these sort of things constitute the unauthorized practice of
3 law and, therefore, the document was not valid. That case
4 has been cited by (inaudible) more recently in 2009, the case
5 of (inaudible) Financial Services versus (inaudible) and
6 there was a (inaudible) who had a prior judgment for that
7 (inaudible) and the trial court (inaudible) to the mortgage
8 company, but the South Carolina Supreme Court said, and this
9 is by Chief Justice Tole (phonetically), that that mortgage
10 and all the things they did to grant the mortgage, search the
11 title, witness the documents and record the document was
12 unauthorized practice of law and, therefore, the Court could
13 not grant the mortgage company equitable subrogation.

14 So in this case, I'm not suing -- my client's not suing
15 Ms. Williams' client, NCP Bayou, LLC. We're not trying to
16 get any money from them. We're not doing anything. We
17 brought this action under section 15-53-30 of the South
18 Carolina code about declaratory judgment and statement said,
19 "Any person interested (inaudible)," and it goes on, "may
20 have determined the question about the construction or
21 validity arising under that instrument and (inaudible)," and
22 that's exactly what we're doing.

23 So I disagree that -- if I were suing them for monetary
24 damages for unauthorized practice of law, I'd agree
25 (inaudible). I agree there's no private cause of action but

1 I'm not -- my cause of action not only (inaudible). I'm not
2 suing them for anything. I'm asking the Court to determine
3 the validity of the (inaudible) and I think what is happening
4 in the two cases I cited was the instrument that was the
5 result of unauthorized practice of law was not included and
6 that's the relief I would like to see.

7 In responding to Ms. Williams' comment about
8 (inaudible) mother's estate, my client went through
9 bankruptcy and got a (inaudible) bankruptcy back over a year
10 ago, a year and-a-half ago. If he inherent some land now or
11 in the future from his mother, the judgment that NCP holds
12 would not be enforceable because it's discharged from
13 bankruptcy.

14 So I think we do have a legitimate request for the
15 declaratory judgment and the cases I've cited, the Supreme
16 Court has approved that and granted the relief just like
17 we're seeking here. So I would request the motion be
18 dismissed and if the Court would like a memo of law from me,
19 (inaudible).

20 I can't hear you. I'm still --

21 THE COURT: If you will provide a memo within 10 days,
22 that would be helpful and, of course, send a copy to the
23 other side.

24 MR. NETTLES: Certainly will.

25 THE COURT: Yes, ma'am, Ms. Williams. Any response?

1 MS. WILLIAMS: Yes, Your Honor. Just two points
2 briefly.

3 Number one, our argument and our motion to dismiss is
4 that regardless of whether or not the deed was prepared in
5 connection with the unauthorized practice of law, there's no
6 support for the allegation that the deed is null and void.
7 In fact, that conclusion is the opposite of South Carolina
8 law.

9 Additionally, the two cases that Mr. Nettles cited,
10 *Matrix* and *Beyer Services*, both of those cases where a
11 mortgage company seeking to enforce a mortgage that was
12 prepared in connection with the unauthorized practice of law
13 and the Court held that a bad actor, such as that mortgage
14 company, could not, as a matter of equity, then turn and
15 enforce its mortgage. And so I think that's entirely
16 different than what's happening here.

17 Here Mr. Boyles is trying to allege, years after he
18 received the deed and an interest in property, that it is now
19 invalid and null and void as to everyone, including himself,
20 because it was prepared by a non-lawyer which constitutes the
21 unauthorized practice of law. We would say that they're both
22 entirely separate. Here there's nobody seeking to enforce
23 the deed that was involved in the bad action other than,
24 potentially, Mr. Boyles.

25 THE COURT: I will await the memorandum from Mr.

1 Nettles and I'll review the information because I think you
2 also indicated, Ms. Williams, that you had filed a brief as
3 well?

4 MS. WILLIAMS: Yes, Your Honor.

5 THE COURT: And I'll wait for that, as well. So I'll
6 look at those two, together, and then do a (inaudible) there.

7 MS. WILLIAMS: Thank you, Your Honor.

8 MR. NETTLES: Thank you, Your Honor.

9 THE COURT: Thank you very much. Appreciate it. Thank
10 you for your patience.

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24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED

25 AT 3:42 p.m.)

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 14, Jasper County, South Carolina, on the 28th day of September, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 22, 2024

Lynda Monroe, Transcriber

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 23, 2024

/s/ F. Truett Nettles, II
F. Truett Nettles, II, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401 SC Bar# 4195
(843) 266-8122
SC Bar# 4195
tnettles@rosenhagood.com
Attorney for the Appellant

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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM JASPER COUNTY

Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2023-CP-27-00001

Mark C. Boyles,.....Appellant,

v.


NCP Bayou, LLC,.....Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Respondent NCP Bayou, LLC by email on October 23, 2024, addressed to its attorneys of record Lauren P. Williams (lauren@russellpattersonlaw.com) and Russell P. Patterson (russell@russellpattersonlaw.com).

October 23, 2024

Respectfully submitted,



Karen Nissen, Paralegal to
F. Truett Nettles, II
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 266-8122
Attorney for the Appellant

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Oct 23 2024

SC Court of Appeals

Karen Nissen
Email: knissen@rosenhagood.com
Direct dial: (843) 266-8133

October 23, 2024

Via Email: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Mark C. Boyles v. NCP Bayou, LLC
Appellate Case No.: 2024-000460

Dear Ms. Kitchings:

On behalf of Appellant Mark C. Boyles, attached please find the following for filing:

1. Record on Appeal with Proof of Service.

With best regards, I am

Sincerely,



Karen Nissen
Paralegal to F. Truett Nettles, II

Enc.

cc: Lauren Williams, Esq. (via email)
Russell P. Patterson, Esq. (via email)