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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Charles B. Simmons, Jr., Master in Equity Judge

Case No. 2024-002207

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUE

1. IS THE COURT'S RULING THAT PLAINTIFF HAD STANDING UNDER THE MORTGAGE SUPPORTED BY THE RECORD, IF NOT, IS THE COURT'S RULING AN ABUSE OF DISCRETION, VIA PREPONDERANCE OF THE EVIDENCE, IF SO, DID THE RULING VIOLATE APPELLANT'S SOUTH CAROLINA AND THE US CONSTITUTIONAL DUE PROCESS RIGHTS?
2. IS THE COURT'S DETERMINATION THAT APPELLANT IS THE LEGAL TITLE HOLDER OF THE SUBJECT PROPERTY VIA THE DEED OF DISTRIBUTION SUPPORTED BY THE RECORD? IF NOT IS THE RULING AN ERROR IN LAW? IF SO DID THE RULING VIOLATE APPELLANT'S SOUTH CAROLINA AND US CONSTITUTIONAL DUE PROCESS RIGHTS TO NOT BE DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW?
3. DID THE MASTER IN EQUITY EXCEED ITS SUBJECT MATTER JURISDICTION IN DETERMINING THE SPECIAL WARRANTY DEED GRANTED TO THE DECEDENT RUTH WITHERSPOON HER HEIRS AND ASSIGNS FOREVER, DUE TO THE PROBATE COURT HAVING EXCLUSIVE ORIGINAL SUBJECT MATTER JURISDICTION OVER ALL DECEDENT'S ESTATES? IF SO IS THE ORDER VOID?
4. DID THE MASTER IN EQUITY ERR IN ANALYZING ONLY THE GRANTING CLAUSE OF THE SPECIAL WARRANTY DEED AND IN NOT RECOGNIZING OTHER STATE'S LAWS WHEN SIMILAR CASELAW IS FOUND IN OTHER STATES? IF SO, DID THE MASTER IN EQUITY ERR IN ITS DETERMINATION THAT THE SPECIAL WARRANTY DEED DID NOT PROVIDE FOR JOINT TENANCY? IF SO, DOES THE DEED PROVIDE FOR JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP UNDER COMMON LAW? IF SO, DOES THE SPECIAL WARRANTY DEED HAVE PRIORITY OVER THE DEED OF DISTRIBUTION? IF SO, IS THE COURT'S ORDER HOLDING THAT THE APPELLANT IS THE LEGAL TITLE HOLDER UNDER THE DEED OF DISTRIBUTION A REVERSABLE ERROR IN LAW?
5. IS THE COURT'S HOLDING THAT IT HAD PERSONAL JURISDICTION SUPPORTED BY THE RECORD? IF NOT, IS THE COURT'S RULING THAT IT HAD PERSONAL JURISDICTION A REVERSABLE ERROR IN LAW? IF SO, IS THE COURT'S ORDER VOID, FOR EXERCISING PERSONAL JURISDICTION WHEN PERSONAL JURISDICTION WAS NOT ESTABLISHED? IF SO, IS RESPONDENT'S CASE DISMISSED, FOR LACK OF PERSONAL JURISDICTION?
6. WHEN JUDGE GRAVELY RULED THAT THERE WAS NOTHING FRAUDULENT ABOUT THE STATEMENTS AT ISSUE" CONCERNING THE DOCUMENT FABRICATED BY MR. WYMAN, WHICH CLAIMED THAT DECEDENT WAS STILL THE OWNER OF THE SUBJECT PROPERTY: IF SO, DID RESPONDENT'S ATTORNEY CONSPIRE WITH JUDGE GRAVELY TO INTERFERE WITH APPELLANT'S TITLE AND PRESUMPTION OF POSSESSION RIGHTS? IF SO, DID RESPONDENT BECOME A STATE ACTOR? IF SO, ARE DAMAGES IN ORDER FOR APPELLANT? IF SO, DID MR. WYMAN COMMIT

FRAUD UPON THE COURT? IF SO IS RESPONDENT CASE DISMISSED FOR THAT REASON?

7 IS THE COURT'S RULING THAT RESPONDENT HAS STANDING UNDER THE NOTE AND IMPLIED RULING THAT RESPONDENT CAN ENFORCE THE NOTE AGAINST APPELLANT? IF SO, DOES A COPY OF THE NOTE EXECUTED ONLY BY MRS. WITHERSPOON SUPPORT SUCH A FINDING?

8. IS THE COURT'S RULING THAT RESPONDENT HAS STANDING UNDER THE MORTGAGE AN IMPLIED RULING THAT RESPONDENT CAN ENFORCE THE MORTGAGE AGAINST APPELLANT? DO THE STATEMENTS IN THE MORTGAGE SUPPORT SUCH A FINDING?

9 IS THE COURT'S RULING THAT RESPONDENT HAD STANDING UNDER THE MORTGAGE AN IMPLIED RULING THAT RESPONDENT HAS A CURRENT A LIEN THAT CURRENTLY ATTACHES TO MRS. WITHERSOON'S PROPERTY INTEREST? IF SO, IS THIS A REVERSABLE ERROR IN LAW?

STATEMENT OF THE CASE

Respondent labeled this action as a foreclosure and claims that the Mortgagor (Mrs. Witherspoon) executed the note and mortgage, whom died intestate on July 5, 2015 (R. Death Cert.) and claims the that the loan is due for the May 1, 2017 payment and that the original lender NVR, conveyed the subject property to Ruth Witherspoon, via the Special Warranty Deed. (R. Compl., p. __ lines __).

Respondent, further claims that Appellant is an heir to Mrs. Witherspoon (Appellant's Mother) whom acquired an interest in the subject property via the Deed of Distribution which recorded on December 6, 2016 (R. Deed of Distribution) and that any interest the Appellant has in the subject property is junior to its mortgage lien, however, Respondent did not state any minimum contacts that Appellant may have had with the forum to support a finding that the Court had personal jurisdiction. (R. Compl., p. __ lines __)

First Respondent did not tell the truth, when it alleged that NVR conveyed the subject property to Ruth Witherspoon, because the subject property was conveyed to Ruth Witherspoon

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her heirs and assigns forever as joint tenants with the right of survivorship under common law, whereby Appellant is one of the remaining joint tenants.. (R. Special Warranty Deed p.).

Appellant answered the complaint, admitted that Mrs. Witherspoon executed the note and mortgage, admitted to Respondent's allegation of the probate case, that the Deed of Distribution recorded December 6, 2016 and further alleged that the subject property was held in joint tenancy with her Mother and Brother, via the Special Warranty Deed, which recorded March 29, 2012 and that she did not sign the note. (R. Sixth Amended Answer, p.____, lines____)

STATEMENT OF FACTS

Its undisputed that there is a Probate case number 2015-ES-23-01615 (R. Compl). That Mrs. Witherspoon passed away on July 5, 2015, that the Special Warranty Deed recorded on March 29, 2012 , Deed of Distribution recorded December 6, 2012, Plaintiff's assignment of mortgage recorded January 17, 2017.

Plaintiff labled this action a foreclosure. However, the complaint pleads a creditor's action to subject land in the hands of heirs to the debt of the ancestor. The Plaintiff claims that Mrs. Witherspoon died intestate, leaving the subject property to Appellant, via the Deed of Distribution that recorded December 6, 2016 and further claims a debt is due and any interest that Appellant has in the property is junior to its lien.

Appellant answered the complaint and alleged that the foreclosure was fraudulent, that the subject property was held in joint tenancy [with the right of survivorship under common law via the Special Warranty Deed], which recorded March 29, 2012, admitted that the Deed of Distribution recorded December 6, 2016 and that she did not sign the note, . Upon Mrs. Witherspoon's passing on July 5, 2015, the subject property did not become part of the Estate of Ruth Ladson Witherspoon due to the fact that the property was held in joint tenancy. After the

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Complaint was filed the Plaintiff fabricated evidence implying that no owner occupies the subject property because the mortgagor is deceased by creating a document entitled, "Certificate of Non Owner Occupancy Due To Death Of Mortgagor". The document was created for the purposes of claiming that the Mrs. Witherspoon was still the owner of the subject property, whereby Plaintiff's lien would still have a property interest to attach because upon death Mrs. Witherspoon's property interest ceased to exist. The ruled that there was , for the purposes of claiming that Mrs. Witherspoon was still the owner of the subject property and Respondent has a lien that attaches to that property interest. Respondent claims that any interest in the subject property by Appellant is junior to its lien.that can be claimed by Ait has a lien on the subject property and the Court ruled that there was nothing fraudulent about the statement at issue. The property vested in the remaining joint tenants upon Mrs. Witherspoon's passing because operation of law when Mrs. Witherspoon passed away and Plaintiff has not produced any evidence that the joint tenancy was severed prior to Mrs. Witherspoon's passing. The Court determined that Appellant is in legal title to the subject property via the Deed of Distribution, however, Plaintiff has not produced any evidence that it obtained a judgment against Mrs. Witherspoon before Appellant went into actual and exclusive possession of the subject property on March 29, 2012, before Plaintiff obtained summary judgement or its final judgment on December 12, 2024.

STANDARD OF REVIEW
FINDING OF FACT
STANDING UNDER THE MORTGAGE

Plaintiff alleged in the complaint that it had a lien on the subject property and that Appellant may have some interest in the subject property but claims that Appellant's interest is junior to its supposed lien. (R. Compl., p. ___, lines __). Appellant, denied that Respondent had any lien on

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the subject property. (R. Sixth AA, p. ___, lines ___) The Court made a finding of fact that Plaintiff has standing based on the mortgage and it appears the Court made an implied ruling that Respondent has a lien on the subject property, which it claims is superior to my ownership interest. (R. Judgment 12/12/24, p. ___, lines ___). However this ruling is not supported by the record, because Appellant's ownership interest was acquired from the original Lender NVR, via the Special Warranty Deed, which recorded on March 29, 2012 and Respondent stated in the complaint that the mortgage was assigned to it on January 20, 2017 more than 4 years after Appellant acquired her ownership interest in the subject property and S. C is a first in time state per . Additionally, the priority that any lien that Plaintiff may have had is only over another liens that may have arose under the mortgagor, because the Court of Appeals has held, "The priority conferred to the mortgagee of a purchase money mortgage, however, extends only to "all other claims or liens arising through the mortgagor:" See SunTrust Bank v. Bryant, 392 S. C. 264, 268, 708, S. E. 2d 821, 823 (Ct. App. 2011).. Also per paragraph 12 "Any Borrower who cosigns this Security Instrument but does not execute the note: (b) is not personally obligated to pay the sums secured by this Security instrument. Finally, paragraph 19 entitled Release, states, "Upon payment of all sums secured by this Security Instrument, this Security instrument shall become null and void. Lender shall release this Security instrument without charge to Borrower." (R. Mortgage, p. ___, Lines ___).

The Special Warranty Deed corroborates these statements, because it shows NVR in consideration of 162,335.000, in receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents to grant, bargain, sell and release unto Ruth Witherspoon, her Heirs and assigns forever, as joint tenants and not as tenants in common (with the right of survivorship under common law), their heirs and assigns forever in fee simple. The Special

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Warranty Deed goes on to restrict and bind the grantor's heirs, successors...to warrant an forever defend all and singular, said premises unto the grantees and the grantees heirs or successors only" (R. SWD, p. ___, lines ___).

And S. C. Code Ann. 30-7-10, which provides in relevant part: Validity of conveyances, "liens and ...the priority is determined by the time of filing for record".

An abuse of discretion occurs

STANDARD OF REVIEW
FINDINGS OF FACT
DEED OF DISTRIBUTION

A. Findings of Fact, in an action in equity (foreclosure), the appellate court may "find facts in accordance with its views of the preponderance of the evidence." See Townes Assocs. LTD. v. City of Greenville, 266 S. C. 81, 86, 221 S.E. 2d 773, 775 (1976) at 775. SThe construction of a clear and unambiguous deed is a question of law for the court. Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987); Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981).

ARGUMENT

1. The Court's ruling that Appellant has legal title to the subject property, is an implied ruling that the Deed of Distribution has priority over Special Warranty Deed, when it is an undisputed fact that the Special Warranty Deed recorded first in time.

The Parties agreed that Ruth Witherspoon died July 5, 2015 (R. Death Cert.) , Appellant followed 2. Plaintiff's lead that Mrs. Witherspoon died intestate leaving the subject property to her Heirs, reflected in the probate records, via the Deed of Distribution. (R. Compl., p. ___lines ___) and (R. Sixth AA, p. ___lines ___) The Parties further agreed to the Delivery of the Deed of NVR/Special Warranty Deed which recorded March 29, 2012. However, Plaintiff did



not tell the truth when it stated that the subject was granted only to Ruth Witherspoon. (R. Compl, p. ___ lines ___). Appellant clarified that the subject property granted to (Mother, Brother and herself) (R. 6th AA, p. ___ lines ___) as the granting clause shows, "granted unto Ruth Witherspoon her heirs and assigns forever".

3. The habendum clause shows "unto the grantees as joint tenants and not as tenants in common their heirs and assigns forever in fee simple". (R. Special Warranty Deed a/k/a SWD, p. ___ lines ___) in Appellant's Deed there is no discrepancy in the four unities. of time, title, interest and possession and the S. C . Court of Appeals has held "Under the common law, a conveyance must possess the unities of interest, title, time and possession to create a joint tenancy with the right of survivorship". See Estate of Sherman Ex Rel. maddoc v. Estate of Sherman Ex Rel . Snodgrass, 597 S. E. 2d 850 (S. C. Ct. App. 2004).

4. Appellant filed a Memorandum of law in opposition to the motion for summary judgment and attached a certified copy of the Special Warranty Deed (R. Memo of Law, Exhibit " ", p. ___, lines ___), however Judge Gravely after asking Appellant about the motion to compel never asked Appellant if she had anything to add to the hearing after Respondent's attorney Mr. Laney, III (# 6933) testified to the note and mortgage serving as advocate and witness at the initial hearing for summary judgment. (R. Order 7/24/19, p. ___ lines ___)

At the final hearing Defendant presented the Special Warranty Deed and stated the subject property was held in joint tenancy with the right of survivorship under common law and that when Mrs. Wither-spoon passed away her interest in the subject property ceased to exist and so did the lien of the mort-gage, quoting Harms v. Sprague 105 111.2d 215, 473 N.E. 2d 930, 1984, without any objection from Respondent or offer of evidence that the joint tenancy was severed prior to Mrs. Witherspoon's passing, which is shown in the final Judgment (R. 12/12/24 Judgment, p. ___,

lines __) . (R. Trans., p. __, lines __)

Appellant also quoted *Weatherly v. Medlin* 139 S. E. 633 (S. C. 1927) (which only concerns liens when a person dies), where by the S. C. Supreme Court has held, "A mortgage is a conventional instrument between the parties. It is a specific lien only upon property covered by it, and , when that property ceases to exist, the lien is dead."

Additionally, according to S. C. Code Ann. 19-3-120, which provides in relevant part: "Every court of this State shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States when such common law or statutes shall have been put in issue by the pleadings." (R. Sixth AA, p. __ lines __).

When the final Judgment was issued, it stated the court rejects this argument following a review of the Special Warranty Deed. When Judge Simmons made the determination after reading the granting clause, he stated, "The Deed does not create a joint tenancy". The situation was awkward and Appellant wasn't sure if it was ok to leave the witness stand and obtain the case law that she had with her. However, the Order does show that Appellant raised the illinois case law. (R. Judgement, p. __ lines __).

The Deed shows the right of survivorship because it contains the 4 unities of time, title, interest and possession. Also in relation to survivorship it shows "...unto the grantees as joint tenants and not as tenants in common, their heirs and assigns forever in fee simple. The South Carolina Supreme Court established that even if the deed mentions "heirs and assigns forever, "the intention to create a joint tenancy with the right of survivorship can still be inferred based on the overall language of the Deed. See *Smith v. Cutler* 366, S. C. 546, 623 S. E. 2d 644 (S. C. 2005).

Appellant's SWD appears to contain the 5 usual covenants mentioned in S. C. Code
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. 27-7-20, which are: a) seller is seized in fee; b) seller has the right to convey; c) that the purchaser his heirs and assigns shall quietly enjoy the land; d) that the land is free from all encumbrances; and e) further insurances. See Bennett v. Investors Title Ins. Co., 635, S E. 2d 649 (S.C. Ct. App. 2006) The SWD is notarized, witnessed and sealed.

Finally, the Special Warranty Deed is prepared by an Attorney, and recorded first in time which has priority over the Deed of Distribution under S. C. Code Ann. 30-7-10, which provides in relevant part: Validity of conveyances, "liens and ...the priority is determined by the time of filing for record".

CONSTRUING THE DEED IS QUESTION OF LAW

The construction of a clear and unambiguous deed is a question of law for the court. Gardner v. Mazingo, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987); Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981). "[I]t is the duty of the court to construe deeds and determine their legal effect, where there is no such ambiguity as requires parol proof and submission to the jury." 26A C.J.S. Deeds § 168 (2001).

ARGUMENT

In this case Respondent has conceded that Ms. Hodges and Stanley Witherspoon are heirs of Mrs. Witherspoon,(R. Compl., p. __, lines __) Appellant reiterates all statements above and incorporates those statements here by reference. The court failed to fully consider the Deed and apply law to the facts, because after reading the granting clause, Judge Simmons stated that the Deed did not provide for joint tenancy. A and in South Carolina if the Deed states joint tenancy, it will be construed as joint tenants and if the Deed contains the four unities, it contains the right of survivorship, which is supported as follows: "if the deed states joint tenancy it will be

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construed as joint tenants See *Free v. Sandifer*, 131 S. C. 232, 236, 126 S. E. 521, 522 (1925)
"Under common law, a conveyance must possess the unities of interest, title, time, and possession to create a joint tenancy with the right of survivorship". See *Sherman Ex Rel Maddock v. Estate of Sherman E Rel Snodgrass*, 597 S. E. 2d 850 (S.C. Ct App. 2004)

An abuse of discretion occurs when a Court's decision is controlled by an error in law, as shown above if the Deed states joint tenancy, it is to construed as such and . This ruling is prejudicial to my due process rights, because D did not provide for a joint tenancy prejudiced my ownership rights rights, under the S. C Const art 3 v. 11 and the US Const XIVTH Amend that I shall not be deprived of life, liberty or property without to own the subject property fee of any claim of Respondet, espondent, whereby in the very Deed, Respondent is restricted from making claims

against the Heirs and subject propety. (R. SWD, p. ___ lines ___) This ruling by the Court is manifest injustice because it violates established precedent.

Appellant was concerned about being deprived of her property rights without being heard by a court of competent jurisdiction, becuase the Due process clause protects agains me from being ddepried of my property rights by awith out due process of law. (R. Objection to due process, p. ___ lines ___)

An abuse of discretion occurs when there is an error in law

STANDARD OF REVIEW II. SUBJECT MATTER JURISDICTION

C. "The question of subject matter jurisdiction is a question of law". See *Bridges v. Wyadote Worsted Co.*, 243 S.C. 1, 132 SE. 2d 18 (1963). "This Court reviews questions of law de novo." See *Town of Summerville v. City of North Charleston*, 378 S. C. 107, 110, 662 S. E. 2d 40, 41 (2008). "The jurisdiction of a court is determined by the sovereign creating it," so reference

must be made to local law, such as the constitution and the laws of the state. Peterson v. Peterson, 333 S.C. 538, 547–48, 510 S.E.2d 426, 431 (Ct. App. 1998).

ARGUMENT

D. In initial partial summary judgment order the County Court held it subject matter jurisdiction based on where the court and property are located, referred to Meaders Bros. v. Skelton.

Meaders Bros can be distinguished from this case because the Mortgagors in that case were alive and S. C. Code 62-3-104. , does not apply to this case when Respondent waives its right to seek a deficiency judgment. Respondent seeks to utilize the Deed of Distribution as to where Appellant's acquired her property interest, however, the probate proceeding mentioned in the complaint Probate Case no. 2015-ES-2301615 is still pending and is not the final determination of the Probate Court's review. The County Court held, it had subject matter jurisdiction and that Defendant had legal title to the subject property via the Deed of Distribution. (R. Judgment, p. ___ lines ___)

F. After the Court of Appeals remitted the case and pointed out the Mrs. Witherspoon had died (R. COA Decisoin, p. ___ lines ___) , the the County Court has failed to properly consider, that Mrs. Witherspoon was deceased, as of July 5, 2015, and that the Probate Court has exclusive subject matter jurisdiction over all estates of Decedents under S. C. Probate Code 62-1-302(a). The County Court failed to properly consider that subject matter jurisdiction is a matter of law and that once the administration of an estate begins in the probate court it remains in the probate court until probate is complete.

This is supported by the following:

E. C. Const art. V. § 11, which provides: "The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction



shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law" . And the S. C. Supreme Court has held, "An action for foreclosure adjudicates the mortgagor's interest in real property". See *Bartles v. Livingston*, 282 S.C. 448, 464, 19 S.E. 2d 707, 716 (Ct. App. 1984),

F. S. C. Probate Code Ann. § 62-1-302(a), provides: "... to the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents....and determination of property interests of an estate".

G. Finally the S. C. supreme Court has held, We have recently affirmed that principle in *Tucker v. Tucker*, 264 S.C. 172, 177, 213 S.E.2d 588, 590 (1975), where, in holding that a circuit court has only appellate jurisdiction, once a matter is commenced in the probate court we said: While it is true that the circuit court has general jurisdiction in civil matters, once the forum for the administration of an estate has been chosen, the forum or court so assuming jurisdiction has control of the administration of the estate and parties interested in estate matters should apply to the judge of that court.

H. Abuse of discretion occurs with a court's decision by an error in law

STANDARD OF REVIEW III. STANDING

H. Standing may be acquired by : 1) by statute; 2) through the rubric of 'constitutional standing'; or 3) public importance exception. See *ATC South, Inc. v. Charleston Cnty.*, 380 S. C. 191, 195, 669 S. E.2d 337, 339 (2008) see also *Sea Pines Ass'n for Prot. Of Wildlife, Inc. v. S. C. Dep't of Nat. Res.* 345 S. C. 594, 600-03, 550 S. E. 2d 287, 291-92 (2001). In this case Respondent alleged statutory standing under S. C. Code Ann.

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I. The County Court ruled, that Plaintiff had standing under the note and mortgage (R. Judgment, p. ___, lines ___ l)

I. A review of the note shows that only Mrs. Witherspoon executed the note. And Appellant cited to the statute of frauds in her sixth amended answer, whereby a person cannot be held liable for a contract that exceeds 1 year, when the person did not sign to contract, per .C Code Ann. 32-3-10 (1)(2)(4)(5). (R. Sixth Amended Answer, p ___, lines ___)

J. Respondent also claim statutory standing under title 36. However, 36-3-401, which provides in relevant part (a) "A person is not liable on an instrument unless (i) the person signed the instrument".

K. The mortgage states that a person that did not sign the note is not liable for the mortgage. (R. Mortgage, p. ___ lines ___)

CIVIL CONSPIRACY VIA FRAUD UPON THE COURT STANDARD OF REIVEW

Per the S. C. Supreme Court, fabrication of evidence by an attorney is extrinsic Fraud Upon the Court. See. *Chewing v. Ford* Opinion No 25627 filed April 14, 2003. This Honorable Court has held " that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. See *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (.1988). "Fraud upon the Court, whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. See *Chewing v Ford Motor Co.* 354 S. C. 72, 78, 579 S. E. 2d 605, (608) (2003).

Judge Gravely #2755 and Mr. Jason Wyman #100271 conspired to interfere with Defendant's rights in the subject proeprty by agreeing to prosecute this case as though Mrs. Witherspoon was

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still the owner of the subject property. The Plaintiff needs Mrs. Witherspoon to still be the owner because it would support its claim that it still have a lien on the subject property because in south Carolina the lien attaches to the property that is mortgaged. Mrs. Witherpoon's ownership ceased to exist upon death and any lien that Plaintiff may have had no longer had a proprty interest to attach itself to. would any lien that Plaintiff may have had would still attach to Mrs. Witherspoon's property interest. Additonally the Co- Conspiritor's south to treat Mrs. Witherspoon's property and Defendant's property interest as one in the same.

3. While Mr. Jason D. Wyman #, was an attorney at Rogers, Townsend and Thomas, the original law firm selected by Plaintiff to prosecute a foreclosure case, he fabricated evidence claiming that because the mortgagor (Mrs. Witherspoon) was deceased no owner occupied the subject property by creating a document entitled, "Certificate of Non Owner Occupancy, Due To Death Of Mortgagor".

4. Defendant cited to the document, stated it was fake and fraud upon the court and that Plaintiff was seeking an agreement with Judge Gravely.

5. Judge Gravely overtly ruled that, "there was nothing fraudulent about the statements at issue and such action amounts to an unlawful civil conspiracy, because this allowed Judge Gravely falsley that Plaitiff was a secured creditor, giving Plaintiff this status which is not supported by the record, because in south Carolina the is not coupled with an interest.

6. protected by S. C. Const art 3s 11 and US Const XIVTH aMENDMENT

7. damages

CONCLUSION

For the reasons stated, ths Court should reverse the Judgment of the County Court.

Respectfully submitted



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