

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 Timothy Nunally, Mark Nunnally,)
)
) Plaintiffs)
)
)
 v.)
)
 Tina Guerry, individually and in her official)
 capacity as the Lexington County Register of)
 Deeds,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2024-CP-32-01682
**ORDER GRANTING
 DEFENDANT’S MOTION FOR
 SUMMARY JUDGMENT**

This matter is before the Court pursuant to the Defendant’s Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS

The facts as shown by the affidavit of the Register of Deeds and as presented at this Hearing are as follows:

1. The Plaintiffs attempted to record the document that was attached to their Complaint, which is alleged to be a \$100 million lien on property at least partially owned by the Plaintiffs. The lien is captioned as a lien common law and a writ of attachment.
2. The lien was signed by Plaintiff, Timothy Nunally.
3. The alleged lien states that the lien supersedes mortgages and equity liens.
4. The alleged lien states that anyone who modifies or removes the lien is fully liable for damages.
5. The alleged lien further warns that anyone who attempts to modify, circumvent, and/or negate the lien shall be deemed outlaws and/or felons and shall be prosecuted pursuant to federal statutes.
6. The alleged lien further warns that any judicial action which violates the constitutional rights of the individuals may be sued as a cause of action in civil litigation against those performing those acts without any form of immunity.
7. SC Code section 30-9-30 states as follows:

SECTION 30-9-30. Filing of written instruments concerning real or personal property; false or fraudulent documents.

(A) Except as otherwise provided by statute, each clerk of court and register of deeds in this State shall keep a record, in the office in which he files all conveyances, mortgages, judgments, liens, contracts, and papers relating to real and personal property required by statute to be kept by him, by entering in the record the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, or other parties to the written instruments, date of filing, and nature of the instrument immediately upon its lodgment for record. The filing is notice to all persons, sufficient to put them upon inquiry of the purport of the filed instrument and the property affected by the instrument. A return address must be provided on each conveyance, mortgage, judgment, lien, contract, or other document submitted for filing with the clerk of court or register of deeds. A document may be refused for filing if it lacks a complete return address.

(B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process. Within thirty days of a written notice of such refusal, the person presenting the document may commence a suit in a state court of competent jurisdiction requiring the clerk of court or the register of deeds to accept the document for filing.

(2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days' written notice to the person on whose behalf the document was filed at the return address provided in the document. Within thirty days written notice of the proposed removal, the person providing the notice may commence a suit in a state court of competent jurisdiction preventing the clerk of court or the register of deeds from removing the document.

(3) If a clerk of court or a register of deeds improperly refuses to accept for filing or recording or improperly removes from the public records a conveyance, mortgage, judgment, lien, contract, or other document pursuant to this section, the clerk of court or register of deeds is not liable for damages, personally or in his official capacity, for the improper refusal or removal.

(4) For purposes of this subsection:

(a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

- (b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.
8. The Lexington County Register of Deed's (ROD) office reviewed the document and determined that it had reasonable belief that the document should not be recorded pursuant to SC Code section 30-9-30(B)(1) and sent the plaintiffs the letter attached the affidavit of the ROD, Tina Guerry, on file in the case.
 9. As a result of the letter from the ROD, the Plaintiffs filed this lawsuit pursuant to SC Code Section 30-9-30(B)(1) asking this Court to require the ROD to accept document for recording.
 10. The property on which the lien was alleged to attach is the subject of the current foreclosure lawsuit in civil action number 2024-CP-32-01094.
 11. SC Code section 30-9-30 was enacted to give the Clerk of Courts and ROD offices the authority to refuse to record documents when they reasonably believe that the document is materially false fraudulent or is a sham legal process.
 12. The Plaintiffs stated that new proposed lien was to protect the trustee of the property trust.

DISCUSSION

The Plaintiffs attempted to put a \$100 million lien on their own property. The above referenced warnings in the proposed lien by the Plaintiffs in the document were a red flag to the ROD that the document met the definition of 30-9-30(B)(1) and should not be recorded in the ROD for Lexington County. The additional public record information that the Plaintiffs were being foreclosed on the same property on which the proposed lien referenced gave further evidence that the document should not be recorded in the ROD.

The proposed common law lien is not a mortgage, not a mechanics lien, not a HOA lien created by covenants and not a State of Federal tax lien. The Plaintiffs have failed to identify what is the underlying basis for their alleged common law lien. Further, the plaintiffs are attempting to put a lien on property that they at least partially own as shown by the deed attached to this Order. There is no basis in law for a property owner to put a lien on his own property as this creates a form of merger of title in that the Plaintiffs already own the property on which they are attempting to record a lien. If a property owner could put a lien on his own

property, then a property owner could immediately upon obtaining title to property, put a lien on the property to put their lien ahead in priority from any other potential liens being recorded thereafter against the property. This simply cannot be done.

Section 30-9-30(B)(3) also provides that the ROD is not liable for damages personally or in her official capacity for refusing to accept a document for recording pursuant to S.C. Code Section 30-9-30(B)(1).

CONCLUSION

The General Assembly has provided a mechanism to stop materially false or fraudulent or a sham legal process from being recorded in the ROD or filed in the Clerk of Courts office. The Lexington County ROD was doing her job in reviewing the document and deciding that it should not be recorded pursuant to S.C. Code Section 30-9-30 (B)(1).

Based upon the affidavit from the ROD, the evidence presented at the Hearing and from review of the proposed lien, this Court finds that there is no genuine issue of material fact and that the proposed lien meets the requirements of S.C. Code Section 30-9-30(b) and should not be recorded in the ROD office for Lexington County.

Further, this Court finds that the Plaintiffs' allegation for damages against the Defendant is denied as the Plaintiffs have not prevailed and pursuant to S.C. Code 30-9-30 (B)(3) there is no liability personally or in her official capacity for refusing to accept a document for recording.

IT IS SO ORDERED.

Debra R. McCaslin
Judge, Eleventh Judicial Circuit

Lexington, South Carolina
January 17, 2025.



Lexington Common Pleas

Case Caption: Mark Nunnally , plaintiff, et al VS Tina Guerry, individually and as Register of Deeds for Lexington
Case Number: 2024CP3201682
Type: Order/Summary Judgment

So Ordered

Debra R. McCaslin