

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CIRCUIT COURT

Debra R. McCaslin, Circuit Court Judge

Appellant Case No.: 2025-000163

Timothy Nunally and Mark Nunnally

Appellants,

v.

Tina Guerry, individually and in her official capacity
as Lexington County Register of Deeds

Respondent

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Contents..... ii

Table of Authorities iii

Statement of Issues on Appeal 1

Statement of the Case 2

Statement of Facts..... 3

Standard of Review..... 4

Argument..... 5

TABLE OF AUTHORITY

STATUTE

S.C. Code Ann. 30-9-30(B)(1)

STATEMENT OF ISSUES ON APPEAL

Whether the Circuit Judge erred in determining that there was no genuine issue of material fact that the document in question met the requirements of S.C Code Section 30-9-30 (B)(1) and should not be recorded in the Register of Deeds office for Lexington County

STATEMENT OF THE CASE

Appellants attempted to record a document entitled "Lien Common Law and Notice of Writ of Attachment on private and / or Real, Personal Property. The Lexington County Register of Deeds (ROD) office reviewed the document and declined to record the document pursuant to S.C Code section 30-9-30 (B) (1) and a written notice was provided by the ROD informing them. The Appellants then filed a lawsuit pursuant to SC Code section 30-9-30 (B) (1) and asked the Court to require the Lexington County ROD to accept the document for filing and asked for the court to award them attorney fees. The Respondent filed a Motion for Summary Judgment which was heard by the Circuit Court. The Circuit Court granted Respondent's Motion for Summary Judgment.

STATEMENT OF FACTS

Appellants attempted to record a document that put a \$100 million lien by them on property which they were conveyed from the estate of Carl Alvin Nunally, Sr., by a deed of distribution from the estate. The subject property already had a mortgage on it before the conveyance to the Appellants. The mortgage is currently in the process of being foreclosed upon by the mortgagee. The Appellants' lien stated that it superseded mortgages and equity liens and it gave warnings to anyone who might not honor the lien. Pursuant to SC Code section 30-9-30 (B) (1). The Lexington County register of deeds office decline to record the purported lien and sent the appellants written notice by letter dated April 8, 2024.

STANDARD OF REVIEW

Pursuant to S.C. Rule of Civil Procedure 56, Summary Judgment should be granted if there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law.

ARGUMENT

The Circuit Court properly determined that there were no genuine issues of material fact that lien document in question meets the requirement of S.C Code section 30-9-30 (B) (1) so that the Respondent was entitled to judgment as a matter of law.

The facts as shown by the affidavit of the Register of Deeds (Supp Record, p S1 - S3)

were 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 (Record, p 28 - 33).
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. S.C. Code section 30-9-30 states as follows:

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

(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 ROD 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 to the affidavit of the ROD, Tina Guerry.
9. The property on which the lien was alleged to be attached is the subject of the current foreclosure lawsuit in civil action number 2024-CP-32-01094.
10. S.C. 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.
11. The Plaintiffs have not given any response to a discovery question as to what underlying lien did the Plaintiffs have on their own property.

Argument

The Plaintiffs attempted to put a \$100 million lien on their own property. The above referenced warnings by the Plaintiffs in the document were a red flag to the ROD that the document met the definition of S.C. Code section 30-9-30 (B)(1). The additional public record information that the Plaintiffs were being foreclosed on a mortgage that they inherited gave further evidence that the document should not be recorded. It would have been easy for the

ROD to simply record the document and let someone else worry about its validity but the ROD was trying to follow the law set forth in 30-9-30 (B)(1) and not record documents that should not be recorded. It should be noted that the 30-9-30 (B)(2) allows the ROD to remove any document that has been recorded that is reasonably believed to violate the statute.

The alleged common law lien is not a mortgage, not a mechanics lien, not a HOA lien created by covenants and not a State or 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. 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. A lien cannot serve any purpose on property already owned by Plaintiffs. Liens give possible rights to property but no further rights can be obtained more than ownership. 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.

Discovery

Appellants attempted extended discovery in this case when none was needed. There was discovery done, but the Appellants' discovery was greatly excessive, when the only issue in this case is the non-recording of one document.

Conclusion

The general assembly has provided a mechanism to stop false or fraudulent documents or a sham legal process from being recorded in the ROD or filed in the Clerk of the Court's office. The Lexington County ROD was doing her job in reviewing the document and deciding that it should not be recorded pursuant to 30-9-30 (B) (). The Circuit Court reviewed the document in question and agreed with the Lexington County ROD that the document should not be recorded pursuant to SC Code section 30-9-30 (B) (1). It is submitted that this Court should review the document and come to the same conclusion.

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