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SC Court of Appeals

**IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA**

Appellate Case No. 2025-000163
Lower Court Case No. 2024-CP-32-01682

Timothy Nunnally and Mark Nunnally,
Appellants,

v.

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

FINAL BRIEF OF APPELLANTS

Appeal From Lexington County
The Honorable Debra R. McCaslin

Respectfully submitted,

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STATEMENT OF ISSUES ON APPEAL

1. **Genuine Issues of Material Fact & Statutory Misapplication:**

Did the trial court err in granting summary judgment in favor of Respondent despite the existence of genuine issues of material fact—including evidence concerning ownership/capacity (trust vs. individuals), acknowledgment and notary defects, legal description, and the purpose of Appellants' filing—and where Respondent's reliance on S.C. Code Ann. § 30-9-30 (B)(1) was based only on a one-paragraph refusal letter and conclusory affidavit that failed to demonstrate a contemporaneous "reasonable belief" of falsity? (R. p. 90–98, 131–150, 166–175, 176–180).

2. **Discovery Not Enforced / Premature Summary Judgment:**

Did the trial court err in refusing to enforce discovery requests and motions to compel—including unanswered Interrogatories demanding "every fact" supporting S.C. Code Ann. § 30-9-30 (B)(1), a Motion to Enforce Discovery, and a Motion to Deem RFAs Admitted—and then entering summary judgment while such discovery disputes remained unresolved, contrary to Rule 33, SCRPC; Rule 37, SCRPC; and Rule 56, SCRPC? (R. p. 76–85, 111–115, 131–150).

3. **Trust Ownership & Ministerial Duty Misconstrued:**

Did the trial court err in disregarding evidence of the CAN Irrevocable Trust's ownership interest and treating the lien as if it were imposed on Appellants personally, while also reframing what was properly a mandamus action under S.C. Code Ann. § 30-5-90 (to enforce the ministerial duty to record instruments "in the order received") into a merits adjudication about the lien's validity? (R. p. 90–98, 131–150).

4. Motion to Reconsider & Unruled Judicial Notice:

Did the trial court err in denying Appellants' Motion to Reconsider without properly addressing the legal arguments and affidavits presented, and by failing to rule on Appellants' pending Judicial-Notice motion with acknowledged/notarized exhibits and proof of notary commission before granting summary judgment? (R. p. 181-195, 206-210).

STATEMENT OF THE CASE

This appeal arises from the Lexington County Court of Common Pleas, Eleventh Judicial Circuit, Honorable Debra R. McCaslin presiding. Appellants sought relief after Respondent, Tina Guerry, acting in her capacity as Register of Deeds, refused to record a common law lien presented by Appellants. Appellants filed their Summons and Complaint on May 8, 2024 (R. p. 1-5). Respondent answered on May 30, 2024 (R. p. 16-20). Following extensive discovery disputes and motions (R. p. 76-85, 111-115), Respondent moved for Summary Judgment (R. p. 61-65, 126-130). On January 7, 2025, a hearing was held on Appellants' motions and Respondent's Motion for Summary Judgment (R. p. 131-150). On January 23, 2025, the trial court entered an Order granting Respondent's Motion for Summary Judgment (R. p. 166-175, 176-180). Appellants filed a Motion to Reconsider (R. p. 181-195), which was denied on January 24, 2025 (R. p. 206-210). This appeal followed.

STATEMENT OF FACTS

Appellants, acting *pro se*, attempted to record a Federal Common Law Lien and Writ of Attachment to protect trust property held by the CAN Irrevocable Trust. Respondent refused to record the lien, citing S.C. Code Ann. § 30-9-30 (B)(1). Appellants consistently sought discovery to ascertain the alleged basis for Respondent's refusal (R. p. 76–85, 111–115). The trial court did not compel full responses and instead granted summary judgment to Respondent. The January 7, 2025 transcript (R. p. 131–150) reflects the court's decision to proceed to summary judgment despite pending discovery disputes.

STANDARD OF REVIEW

The appellate court reviews a grant of summary judgment *de novo*, applying the same standard as the trial court under Rule 56, SCRPC. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991).

SUMMARY OF THE ARGUMENT

The trial court committed multiple reversible errors that require this Court's intervention.

First, the grant of summary judgment was improper. Appellants raised genuine issues of material fact concerning the validity and purpose of the lien, the ownership of the subject property through the CAN Irrevocable Trust, and the incomplete state of discovery. Rule 56, SCRPC, forbids entry of summary judgment when factual disputes remain.

Second, the trial court refused to enforce discovery despite multiple pending motions to compel. Appellants repeatedly sought interrogatory responses and admissions to establish the basis of

Respondent's claimed "reasonable belief" under S.C. Code Ann. § 30-9-30. The denial of discovery before ruling on summary judgment constitutes an abuse of discretion and prejudiced Appellants' ability to present their case.

Third, the trial court misapprehended the ownership structure of the subject property. By treating the lien as if it were imposed on Appellants' personal property, rather than recognizing the Trust's separate legal interest, the court disregarded material evidence and misconstrued the nature of the transaction.

Finally, the court erred in denying Appellants' Motion to Reconsider without addressing the arguments and affidavit evidence presented. This summary denial deprived Appellants of meaningful review of substantive claims and violated principles of due process.

For these reasons, the Order granting summary judgment and the denial of reconsideration must be reversed, and the matter remanded for further proceedings.

ARGUMENT

I. The Trial Court Erred in Granting Summary Judgment Despite Genuine Issues of Material Fact and Misapplied § 30-9-30(B)(1).

Summary judgment was improper where Appellants raised genuine disputes concerning the validity and purpose of the lien, the CAN Irrevocable Trust's ownership and capacity, acknowledgment and notary defects, and the adequacy of the legal description. The record contains unresolved questions of both law and fact (R. p. 131–150, 166–175).

Moreover, Respondent's reliance on S.C. Code Ann. § 30-9-30 (B)(1) was insufficient. The Register's one-paragraph refusal letter and later conclusory affidavit did not establish the statute's requirement of a contemporaneous "reasonable belief" that the instrument was materially false or a sham. Without such a showing, summary judgment was improper (R. p. 90–98, 131–150, 176–180).

II. The Trial Court Abused Its Discretion by Refusing to Enforce Discovery and Entering Premature Summary Judgment.

Appellants filed multiple motions to compel discovery, including a Motion to Enforce Interrogatories demanding "every fact" supporting Respondent's S.C. Code Ann. § 30-9-30 (B)(1) position, and a Motion to Decree Requests for Admission Admitted (R. p. 76–85, 111–115). The transcript (R. p. 131–150) confirms discovery responses remained incomplete and evasive.

Granting summary judgment while these discovery disputes were pending constitutes reversible error under Rule 33, SCRPC ; Rule 37, SCRPC; and Rule 56, SCRPC. See *Doe v. Roe*, 370 S.C. 208, 634 S.E.2d 573 (2006) (holding that it is improper to grant summary judgment where discovery issues remain unresolved).

III. The Court Misapprehended the CAN Irrevocable Trust's Ownership Interest and Ignored the Ministerial Nature of the Register's Duty.

The lien was filed by the Trustee to secure fiduciary duties relating to trust property. By treating the lien as though Appellants were attempting to encumber their own property, the court misstated the facts and disregarded the Trust's independent legal rights (R. p. 90–98, 131–150).

Further, this proceeding arose in mandamus to enforce the ministerial duty under S.C. Code Ann. § 30-5-90, which requires the Register of Deeds to record instruments “in the order received.” The trial court erred by converting this ministerial-duty action into a merits adjudication of the lien's substantive validity, exceeding its proper scope.

IV. The Denial of the Motion to Reconsider Without Ruling on Judicial Notice Was Erroneous.

Appellants presented a Memorandum of Law with supporting affidavits (R. p. 181–195), and their pending Motion for Judicial Notice asked the court to recognize notarized instruments, acknowledgments, and proof of notary commission already in the record. The trial court denied reconsideration summarily, without addressing either the arguments or the Judicial-Notice motion.

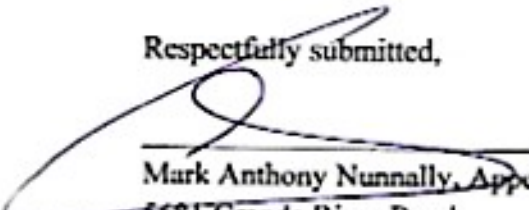
This constitutes reversible error. See *Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (1999) (holding that a Rule 59 (e) motion to reconsider cannot be denied without meaningful consideration of the substantive issues raised).

CONCLUSION & RELIEF SOUGHT

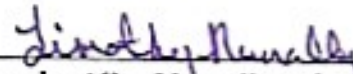
For the foregoing reasons, Appellants respectfully request that this Court REVERSE the Order granting Summary Judgment, VACATE the denial of the Motion to Reconsider, and REMAND this matter for further proceedings including full discovery and trial. Alternatively, Appellants request such other relief as the Court deems just and proper.

SIGNATURE

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