

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KCS
INVESTMENTS, LLC; SINGLETON
PLACE HOMEOWNERS ASSOCIATION,
INC. AND SUNTRUST MORTGAGE,
INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-03201

ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

RECEIVED

JUN 16 2014

SC Court of Appeals

This matter came before me for hearing on March 14, 2013, upon Motion by the Plaintiff for Summary Judgment on the counterclaims filed by Defendant Segars and KCS Investments, LLC (hereinafter "Defendants"). Appearing at the hearing were counsel for the Plaintiff, Daniel A. Saxon, counsel for the Defendant, Thomas J. Finn, and the Defendant Thaddeus F. Segars. Subsequent to the hearing, the parties engaged in an unsuccessful mediation. On November 18, 2013 a status conference was held via telephone during which the parties agreed and did submit supplemental briefs on or before December 6, 2012.

Defendant Segars' counterclaims are the sole remaining issues before the Court. All other claims have been previously determined. At the outset of the hearing Defendant conceded his third counterclaim, Breach of Contract Accompanied by a Fraudulent Act. The Court has reviewed and considered the pleadings, the motions and memoranda submitted, arguments of counsel and authorities submitted. For the following reasons, the Court concludes there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law as to all Defendants' counterclaims on the grounds that the statute of limitations expired before

Defendants' commenced the action against Plaintiff. Based upon my ruling, I need not address the remaining grounds upon which Plaintiff moves.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E.2d 563 (Ct.App. 2001).

STATUTE OF LIMITATIONS

The Defendants' counterclaims are subject to a three (3) year statute of limitations. S.C. Code Ann. § 15-3-530 (1) and (7) (1996, as amended). The "discovery rule" provides an exception to the general rule and tolls the statute of limitations until a person knows or by the exercise of reasonable diligence should know that he has a cause of action. Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct.App.1998). The statute of limitations starts to run upon the discovery of such facts, as would have led to the knowledge thereof if pursued with reasonable diligence. Id. A party has constructive notice if the party knows of facts and circumstances of an injury that would put a person of common knowledge and experience on notice that some right has been invaded or that some claim against another party might exist. Graniteville Co. v. IH Services, Inc., 316 S.C. 146, 447 S.E.2d 226 (Ct.App.1994). The date on which discovery should have been made is an objective, not subjective, question. Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995). In the present case, Defendants filed their counterclaims on or about August 19, 2009, and the statute of limitations bars his claims if Defendants knew or should have known prior to August 19, 2006, that the claim against Plaintiff might exist.

DISCUSSION

On or about March 15, 2004, Defendant Segars entered into a contract for the purchase of Lot 2 Singleton Beach Place Extension (the "Property") located on Hilton Head Island. On or about June 9, 2004, Segars borrowed from Plaintiff the principal sum of \$1,360,000.00 for the purpose of financing the purchase of the Property. In connection with the loan, Plaintiff obtained an appraisal on the Property which indicated the value thereof to be \$1,600,000.00. The Defendants base their counterclaims on the assertion that the appraisal was in error and that, based on the existing baseline established by the Office of Ocean and Coastal Resource Management (the "OCRM Line") and the applicable private use covenants, the Property was "unbuildable" and thus had little or no value. Segars testified that he relied on the appraisal in his decision to purchase the Property, but also testified that his reserved contingencies to terminate the contract had expired prior to the appraisal.

The Property is depicted on two (2) separate subdivision plats recorded in the Office of the Register of Deeds for Beaufort County. The first, dated November 12, 2002 and recorded on January 29, 2003 (the "2002 Plat") depicts the OCRM Line and, located further toward seaward on the Property, a line marked as "Future Beach Management Act Baseline". This plat does not bear the approval stamp of the Office of Ocean and Coastal Resource Management ("OCRM"). The plat, dated December 4, 2003 and recorded on December 15, 2003 (the "2003 Plat") depicts the same OCRM Line, but removes any reference to the "Future Beach Management Act Baseline". The 2003 Plat bears the approval stamp of the OCRM. Both the 2002 Plat and the 2003 Plat were recorded of record in Beaufort County prior to the loan from Plaintiff to Defendant Segars and prior to Segars' contract to purchase the Property.

Segars testified that he purchased the Property and borrowed the funds from the Plaintiff under the mistaken belief that the OCRM Line had been relocated to the location depicted as the "Future Beach Management Act Baseline" on the 2002 Plat, which would have allowed for

construction of a residence of a certain size. He further testified that, at some point after purchasing the Property, he learned that the OCRM Line had not been relocated and that no residence could be constructed on the Property, due to the location of the OCRM Line and the private use covenants applicable to the Property. Segars alleges that, due to the fact that neither he nor anyone else could build on the Property, the value of the Property was a fraction of the appraised value. Thus, for the purposes of Plaintiff's motion for claim preclusion under the statute of limitations, the question becomes what date Segars' learned or was placed on constructive notice that construction on the Property was impaired.

Segars testified that he could not remember when he first learned that the OCRM Line had not been relocated as he believed. However, by March 16, 2005, Segars had retain an attorney to represent him to intervene in a pending Administrative Law Court case against the South Carolina Department of Health and Environmental Control ("DHEC") wherein he alleged that he was adversely affected by DHEC's position refusing to relocate the OCRM Line. Thus, at least by March 16, 2005, Segars knew of the correct location of the OCRM Line.

The question of when Segars learned of the location of the OCRM Line in relation to his claimed inability to build on the property has been determined by this Court in three (3) prior cases. The cases were against: (i) the attorney representing him in the purchase of the Property (Civil Action No. 09-CP-07-00381); (ii) the title insurance company (who issued Segars title insurance upon the Property) and the sellers (Civil Action No. 2008-CP-07-2791); and (iii) against the title insurance company individually (Civil Action No. 2011-CP-07-00931). All of these cases have been dismissed based on the expiration of the Statute of Limitations.

In Civil Action No. 2008-CP-07-2791, the Court held that on May 5, 2009 "[Segars] admits in his Complaint he was put on notice that a claim might exist when he discovered the existence of the corrective plat. [Segars] alleges, "in late 2005 [he] learned of the corrective plat recorded on December 15, 2003, and as a result the residence represented in the architectural

drawing provided to [him] could not be constructed on Lot 2, but that pursuant to said plat only a residence approximately 2,000 square feet could be constructed on lot 2.” Complaint, ¶ 16” [Order Granting Defendants Richardson Street Partners, LLC and J. Paul Gaugh’s Motion to Dismiss, filed May 20, 2009, Honorable Marvin H. Dukes, III, p. 4].

This Court has previously found and held that Segars, “was on constructive notice of the [2003 Plat] and its contents in October 2004 due to his participation as a party in a plat revocation lawsuit against the Town of Hilton Head Island, the very subject of which was the 2003 plat.” [Order Granting Summary Judgment to Defendants, Civil Action No. 09-CP-07-00381, filed July 2, 2010, Honorable Carmen T. Mullen, p. 4-5].

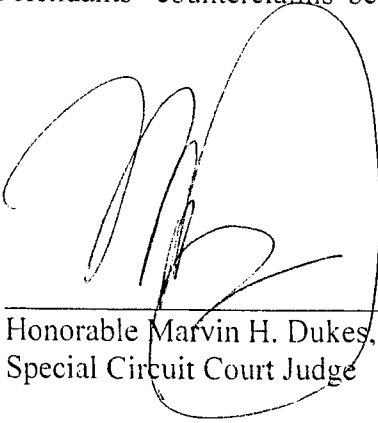
Finally, this Court has previously found and held that, “Plaintiff [Segars] discovered or should have discovered the facts underlying his Complaint at the time of the issuance of the title insurance policies [June 23, 2004], because the matters of which he now complains were matters of public record at that time. Plaintiff is not a bona fide purchaser because sufficient record notice was available as of the date of the issuance of the policies to charge him with a duty to inquire, which if pursued with due diligence, would have supplied him with knowledge of the restrictions and plats.” [emphasis added] [Order Granting Defendant’s Motion to Dismiss, Civil Action No. 2011-CP-07-0931, filed May 24, 2012, Honorable Carmen T. Mullen, p. 2].

Based on the evidence and deposition testimony in this matter and the previous findings of this Court, it is clear that, by March 16, 2005 at the latest, Segars had actual knowledge that the OCRM Line was not located where he thought at the time of purchase of the Property and that the actual location affected his ability to build a residence on the Property. This discovery, pursued with reasonable diligence would have led Segars to conclude that appraisal might be in error, and thus, should have known a claim based on the appraisal might exist. I find that Defendants failed to file the counterclaims on the alleged erroneous appraisal within three years. Accordingly,

NOW, THEREFORE, IT IS ORDERED that summary judgment be granted to Plaintiff National Bank of South Carolina and that all of Defendants' counterclaims be dismissed with prejudice.

AND IT IS SO ORDERED.

Beaufort, South Carolina
January 12, 2014



Honorable Marvin H. Dukes, III
Special Circuit Court Judge

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07-03201

NATIONAL BANK OF SOUTH CAROLINA

2014 MAY 15 PM 3:39
THADDEUS F. SEGARS, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ **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 CAME BEFORE ME ON A MOTION TO RECONSIDER, FILED 2/27/2014.
THE MOTION IS DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

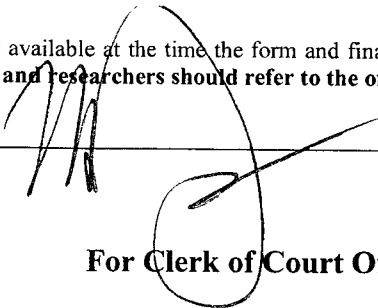
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

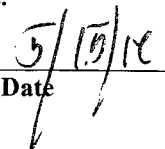
The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

3069

Judge Code


Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

DANIEL A. SAXON

ATTORNEY(S) FOR THE PLAINTIFF(S)

MERRITT G. ABNEY

THOMAS J. FINN

MICHAEL W. MOGIL

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A