

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, Master in Equity

Case No. 2014-CP-07-0380

JMT Capital Holdings, LLC, Plaintiff,

v.

VDM/T Land Company, LLC, and Daufuskie Island Properties,
LLC, Defendants,

And

Daufuskie Island Properties, LLC,
and its successor in interest, Ace
Basin Investments, LLC, Appellant,

v.

Raymond Travaglione, Respondent.

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Appellant offers the following points of clarification and rebuttal to the arguments raised by Respondent.

I. Appellant Assertion of the Applicability of S.C. Code Annotated Section 15-3-520(a) at the Trial Court Level Properly Preserved the Issue for Appeal.

In its Initial Brief, Respondent wrongly states that Appellant argues the applicability of the twenty year statute of limitations under S.C. Code Ann. § 15-3-520(a) for the first time on appeal. (*See* Resp. Brief at p.15, ¶ 1.) Appellant first asserted that the twenty year statute of limitations applied in this action, because the action is “upon a bond or other contract in writing secured by a mortgage in real property,” as set forth in Section 15-3-520(a) in its August 8, 2014 Opposition to Third-Party Defendant’s Motion to Dismiss. (*See* Pl. Opp. to Mot. to Dismiss at p.6, ¶ 3.) Therefore, this argument is properly preserved for appeal.

Additionally, in its Initial Brief, Respondent inaccurately states that the Guaranty at issue is not secured by collateral. (*See* Resp. Brief at p.15, ¶ 3.) In fact, in the thirteenth paragraph of the Guaranty, the collateral is specifically defined and includes “the balance of every deposit account” of the Guarantor – the Respondent – as well as all instruments, securities, and

other property, rights, and interests of the Guarantor that come into the possession, custody, or control of the Lender—the Appellant. (See Third-Party Complaint, Exhibit 1, Guaranty.) This description includes the mortgage instrument securing the Notes between VDM/T Land Company, LLC, which is specifically incorporated into the Guaranty, and whose repayment Respondent guaranteed.

In accordance, Appellant reiterates that under South Carolina law, statutes of limitation are not favored. *Scovill v. Johnson*, 190 S.C. 457, 3 S.E.2d 543, 545 (1939). Longer limitations periods are preferred over shorter periods. *Id.* A specific limitations period controls over a general period. *State v. Life Ins. Co. of Georgia*, 254 S.C. 286, 175 S.E.2d 203 (1970). Therefore, the longer, more specific statute of limitations contained in S.C. Code Ann. § 15-3-520 controls over the general contract statute of S.C. Code Ann. § 15-3-530. Accordingly, the trial court improperly dismissed Third-Party's Complaint as it is not time-barred.

II. Respondent's Alternate Grounds for Affirming the Dismissal of Appellant's Third-Party Complaint Are Without Merit.

Respondent asserts that the claims set forth in Appellant's Third-Party Complaint are not derivative of the claims in the original complaint. (See Resp. Brief at p.16, ¶¶ 2-3.) Respondent rightly quotes the South

Carolina Supreme Court's analysis of South Carolina Rule of Civil Procedure 14(a) in *First Gen. Servs. of Charleston, Inc. v. Miller*, which states that under the Rule, "the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability." The Court goes on to define derivative liability as where "[t]he outcome of the principal claim must impact the third-party defendant's liability" *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (citing Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 1446).

Under this analysis, the case at bar falls directly under the Rule 14 scope of derivative liability. The principal claim is a foreclosure action. The outcome of the foreclosure and the lien priority dispute will drive the deficiency under the Notes. The deficiency under the Notes, in turn, triggers the scope of Appellant's remedy under the Guaranty as against Respondent. The outcome of the foreclosure impacts Respondent's liability insofar as it determines the amount due under the Guaranty. Therefore, the outcome of the principal claim impacts Respondent's liability, and Respondent is a proper third-party defendant in the underlying action.

In addition, because the documents effecting the complete transaction—the Agreements, Notes, Mortgages, and Guaranty—were all executed the same day and all incorporated into one another by reference, it is in the interest of judicial economy to deal with the transaction documents in one action.

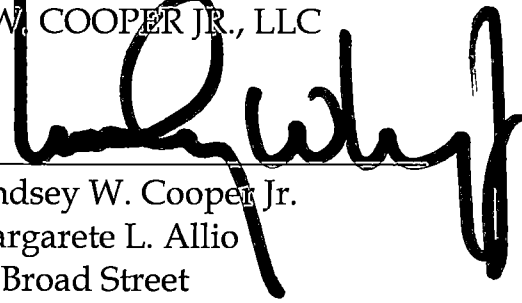
While it is in a Court's discretion to deal with a guaranty document in a separate action or collectively with the other transaction documents, the trial court did not dismiss Appellant's third-party complaint on this ground; rather, the sole reason for dismissal was the trial court's application of the incorrect, shorter statute of limitations. Therefore, due to the interrelatedness of the transaction documents, due to the derivative liability of Respondent in the underlying action, and in the interest of judicial economy, Appellant's Third-Party Complaint was proper and no alternate sustaining grounds exist to affirm the trial court's Order dismissing Third-Party Complaint.

CONCLUSION

For the reasons set forth above, the trial court's Order granting Respondent's Motion to Dismiss and dismissing Appellant's Third-Party Complaint was improper and should be denied.

April 2, 2015

THE LAW OFFICES OF
L.W. COOPER JR., LLC



Lindsey W. Cooper Jr.
Margarete L. Allio
36 Broad Street
Charleston, SC 29401
Telephone: 843.375.6622
Facsimile: 843.375.6623

Counsel to Ace Basin Investments, LLC

Other Counsel of Record:

Tara E. Nauful
Dawn M. Hardesty
Adams and Reese LLP
1501 Main Street, 5th Floor
Columbia, SC 29201
Tel: (803) 254-4190
Fax: (803) 779-4749
tara.nauful@arlaw.com
dawn.hardesty@arlaw.com

Attorneys for Raymond Travaglione

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Marvin H. Dukes, Master in Equity

Case No. 2014-CP-07-0380

JMT Capital Holdings, LLC, Plaintiff,

v.

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And

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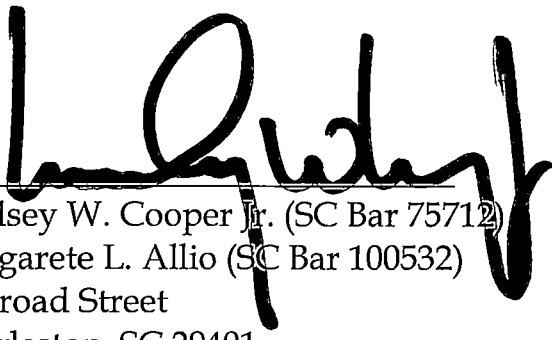
v.

Raymond Travaglione, Respondent.

PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellant on Raymond Travaglione by depositing a copy of it in the United States Mail, postage prepaid, on April 1, 2015, addressed to his attorneys of record, Tara E. Nauful and Dawn M. Hardesty, 211 King Street #330, Charleston, South Carolina 29401.

April 2, 2015



Lindsey W. Cooper Jr. (SC Bar 75712)
Margarete L. Allio (SC Bar 100532)
36 Broad Street
Charleston, SC 29401
Telephone: 843.375.6622
Facsimile: 843.375.6623

Attorneys for Appellant



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LINDSEY W. COOPER JR.

LWC@LWCOOPER.COM

April 2, 2015

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, SC 29201

Re: *JMT Cap. Hldgs, LLC v. VDM/T Land Co., et al., LLC*,
Case No. 2014-CP-07-0380.

Dear Ms. Kitchings:

Enclosed please find one original and one copy of Appellant Daufuskie Island Properties, LLC and its successor in interest, Ace Basin Investments, LLC's Reply Brief and Proof of Service. Please time stamp the copy and return it to this office in the prepaid, preaddressed envelope enclosed. If you have questions, please contact me at 843.375.6622.

Many thanks.

Sincerely,

Margarete L. Allio

Enclosures: As stated.

cc (via first-class & electronic mail):

Tara E. Nauful

Dawn M. Hardesty

Adams and Reese LLP

211 King Street, #330

Charleston, SC 29401

Direct: 843.410.1102

tara.nauful@arlaw.com

dawn.hardesty@arlaw.com

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Lindsey W. Cooper Jr., Esq.
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Honorable Jenny Abbott Kitchings
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South Carolina Court of Appeals
1205 Pendleton Street
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