

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 First Citizens Bank and Trust Company,)
 Inc.,)
)
 Plaintiff,)
)
 v.)
)
 Ronald D. Taylor and Ted D. Smith,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO.: 2014-CP-23-4097

~~2015 OCT 1 11:07 AM~~

ORDER

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PROCEDURAL HISTORY AND FACTS

The Plaintiff, First Citizens Bank and Trust Company, Inc. (referred to herein as "Plaintiff" or "First Citizens"), filed this lawsuit on July 28, 2014 against the above-named Defendants alleging a single cause of action, Breach of Contract. First Citizens alleged that the Defendants failed to make payments towards a Commercial Note ("the Note") that both Defendants executed on May 22, 2008. The Note was secured by a Mortgage and the Mortgage was filed of record with the Greenville County Register of Deeds on May 28, 2008 (Book 4959, Page 2301).

The Defendants' last payment towards the Commercial Note was on September 18, 2008. The Defendants do not contest the amount owed to Plaintiff. Instead, the Defendants contend that the Plaintiff's action is time-barred by the Statute of Limitations. In accordance with the terms of the of the Consent Order entered in this case, the Court decides this case on the briefs submitted by the parties. The parties' only dispute is whether or not the statute of limitations has expired on the Plaintiff's claim against the Defendants.

The Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim. As more particularly set forth herein, the Plaintiff's claim against the Defendants is governed by a twenty-year statute of limitations. Accordingly, the Plaintiff is entitled to a Judgment against the Defendants in this action in the amount prayed for in its Complaint and itemized in the Affidavit of Michael O'Hare, filed contemporaneously with the Plaintiff's Motion for Summary Judgment.

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 RJS

STANDARD

"The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). "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." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'"" *Hedgepath v. American Telephone and Telegraph Company*, 348 S.C. 340, 559 S.E.2d 327, 335 (Ct. App. 2002) (citations omitted).

HOLDING

Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim against the Defendants for the breach of a Commercial Note. S.C. Code § 15-3-530(1) states that an action shall be brought: "[w]ithin three years: (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." (emphasis added). S.C. Code § 15-3-520 provides a twenty-year statute of limitations for "an action upon a bond or other contract in writing secured by a mortgage of real property." S.C. Code § 15-3-520(a) (1976). The Commercial Note signed by the Defendants on May 22, 2008, is a "contract in writing secured by a mortgage of real property." Therefore, the twenty-year limitations period applies in the instant case.

In the case before this Court, the Commercial Note was executed and secured contemporaneously with a mortgage. The note is "a contract in writing, secured by a mortgage of real property" and falls under the twenty-year statute of limitations, S.C. Code § 15-3-520. When the legislature reduced the limitations period of S.C. Code § 15-3-530 from six years to three years in 1988, it preserved the Section 15-3-520 exception: "Within three years: (1) an

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action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." S.C. Code Ann. § 15-3-530. Therefore, the Plaintiff in this civil action had twenty years to file suit against the Defendants and is entitled to Judgment, as a matter of law, against the Defendants in this civil action in the amount of \$66,263.49, plus interest accruing thereon at the contract rate of 4.75% per annum pursuant to the terms of the Commercial Note (\$6.93/day from June 27, 2014) for a total amount, as of September 15, 2015 of \$69,347.34.¹ In addition, the Plaintiff is entitled to its attorney's fees and the costs of this action by the terms of the Commercial Note.

Before awarding attorneys fees, this Court must conduct a two-part analysis. First, this Court must verify that it can award attorneys' fees. Second, the Court must conduct an analysis in accordance with *Jackson v. Speed*, 486 S.E.2d 750, 326 S.C. 289 (S.C. 1997). In accordance with *American Federal Bank, FSB v. Number One Main Joint Venture*, 467 S.E.2d 439, 321 S.C. 169 (S.C. 1996) (citations omitted), "[A]ttorneys' fees are not recoverable unless authorized by contract or statute. In the case at hand, attorney's fees are recoverable in accordance with the terms of the Note.

In *Jackson*, the South Carolina Supreme court stated that the following should be considered when determining a reasonable attorney's fee:

[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Further, on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Jackson v. Speed* at 760 (internal citations omitted).

For the reasons set forth herein, \$5,000 in attorney's is reasonable, based upon the Court's consideration of the factors below.

The nature, extent and difficulty of the legal services rendered

This was a contested breach of contract action involving contract interpretation and a statutory analysis of the Statute of Limitations. This case was filed over one year ago and Plaintiff's Counsel has successfully navigated this case to a resolution. Plaintiff's counsel, Joey R. Floyd, has

¹ June 27, 2014 to September 15, 2015 = 445 days. Accrued interest, as of September 15, 2015: 445 days x 6.93 = \$3,083.85.

approximately fourteen years of experience as an attorney. Defendant's counsel, Randall S. Hiller, has over thirty years experience as an attorney.

The contingency of compensation

The contract between Plaintiff and the Defendants expressly provides for the Plaintiff to recover its attorneys' fees.

The time and labor necessarily devoted to the case

Plaintiff's counsel filed this action, narrowed the issues in dispute with Defendants' Counsel, reached an agreement with the Defendants' Counsel to allow this matter to be decided on briefs, drafted and filed a Memorandum in Support of its Motion for Summary Judgment and provided this Court with a proposed Order for consideration.

The fee customarily charged in the locality for similar legal services

A fee of 15% is not reasonable in light of the circumstances of this case and exceeds the amount necessary to collect in a case where the parties consent to no hearing and a decision pursuant to Summary Judgment.

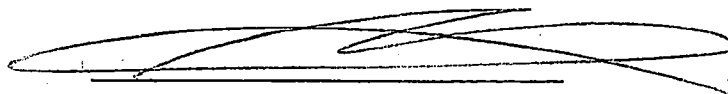
The beneficial results obtained

The Plaintiff's Counsel has achieved a beneficial result for his client in that the Plaintiff's Motion for Summary Judgment has been granted. In other words, the Plaintiff's Counsel has achieved the most beneficial result at this point in time.

ORDER OF JUDGMENT

It is therefore ORDERED that a Judgment be entered against the Defendants, Ronald D. Taylor and Ted D. Smith, in the following amounts: \$69,347.34 as the amount due, as of September 15, 2015, \$5,000 in attorneys' fees, \$495.89 in costs, for a total amount of \$74,843.23, with interest accruing thereon at the post-judgment interest rate.

IT IS SO ORDERED.



The Honorable Robin B. Stilwell
Circuit Court Judge for the Thirteenth Judicial Circuit

September 24, 2015

A Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10/6/15