

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

The Honorable Robin B. Stilwell

Case No.: 2014-CP-23-4097

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SC Court of Appeals

First Citizens Bank and Trust Company, Inc. Respondent,

v.

Ronald D. Taylor and Ted D. Smith.....Appellants.

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

- I. WHETHER, IN AN ACTION WHICH THE PARTIES AGREED WOULD BE DECIDED ON CROSS-MOTIONS FOR SUMMARY JUDGMENT BASED UPON THE PLEADINGS, SUPPORTING MEMORANDA AND AFFIDAVITS, THE TRIAL COURT PROPERLY DETERMINED THAT THE TWENTY-YEAR STATUTE OF LIMITATIONS SET FORTH IN S.C. CODE ANN. § 15-3-520 APPLIES, WHERE THE CAUSE OF ACTION IS BASED UPON APPELLANT'S FAILURE TO PAY A COMMERCIAL NOTE WHICH INDICATES ON ITS FACE THAT IT IS SECURED BY A MORTGAGE OF REAL PROPERTY?

STATEMENT OF THE CASE

The Respondent, First Citizens Bank and Trust Company, Inc. (referred to hereinafter as "Respondent" or "First Citizens"), filed this lawsuit on July 28, 2014 against Ronald D. Taylor and Ted D. Smith (collectively referred to hereinafter as "Appellants") alleging a single cause of action, Breach of Contract. (R. p. 7). Respondent alleges that the Appellants failed to make payments towards a Commercial Note (referred to hereinafter as "the Note") that Appellants executed on May 22, 2008. (*Id.*). 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). (R. p. 62). The Note indicated that it was secured by a mortgage on the face of the Note. (*See* R. p. 10). Appellants' last payment towards the Note was on September 18, 2008. (R. p. 37). The unpaid balance is \$66,263.49, plus interest. (R. p. 7). Appellants do not dispute that they failed to pay the balance due under the Note. Rather, Appellants contend that Respondent's action was not brought within the applicable statute of limitations. (R. p. 14).

Respondent and Appellants both agreed that the sole issue for the Trial Court was whether the action was brought within the applicable statute of limitations. (R. pp. 18-19). As such, the parties, pursuant to a Consent Order, agreed that the case would be decided by cross-motions for summary judgment based upon the pleadings, supporting memoranda and affidavits. (*Id.*). Appellants argued that the three-year statute of limitations set forth in S.C. Code Ann. §

15-3-530(1) (hereinafter “section 15-3-530” or “three-year statute of limitations”) applied to Respondent’s claim. (See R. pp. 32-33). Respondent argued that the applicable statute of limitations is the twenty-year statute of limitation set forth in S.C. Code Ann. § 15-3-520(a) (hereinafter “section 15-3-520” or “twenty-year statute of limitations”). (R. pp. 38-40). After considering the submissions from both Respondent and Appellants, the Trial Court held that the Note is “a contract in writing secured by a mortgage of real property”. (R. pp. 63-65). The Trial Court ruled that the twenty-year statute of limitations in S.C. Code Ann. § 15-3-520 applied and Respondent’s claim was brought within the applicable statute of limitations. (*Id.*). Accordingly, the Trial Judge entered judgment in favor of Respondent. (*Id.*) On December 3, 2015, Appellants filed a Notice of Appeal of the Trial Court’s decision. (R. p. 72).

STANDARD OF REVIEW

“In reviewing a motion for summary judgment, the appellate court applies the same standard of review as the trial court under Rule 56(c), SCRPC. *Companion Prop. & Cas. Ins. Co. v. Airborne Exp., Inc.*, 369 S.C. 388, 390, 631 S.E.2d 915, 916 (Ct. App. 2006) (citing *Cowburn v. Leventis*, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005)). 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. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). “Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2002) (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)). Once the moving party meets its initial burden, the opposing party must come

forward with specific facts showing that there is a genuine issue for trial.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005).

ARGUMENT

Respondent requests that this Court affirm the Trial Court’s ruling. The Trial Court properly determined that the action was based upon a contract in writing secured by a mortgage of real property. Thus, the twenty-year statute of limitations set forth in section 15-3-520 applies and Respondent’s claim was brought within the applicable statute of limitations.

- I. BECAUSE ACTIONS BASED UPON CONTRACTS IN WRITING SECURED BY MORTGAGES OF REAL PROPERTY ARE GOVERNED BY THE TWENTY-YEAR STATUTE OF LIMITATIONS SET FORTH IN S.C. CODE ANN. § 15-3-520, THE TRIAL COURT PROPERLY DETERMINED THAT RESPONDENT’S CLAIM FOR BREACH OF CONTRACT WAS BROUGHT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

This case arises from Appellants’ failure to pay the balance due under a commercial note. Pursuant to a consent order, both parties agreed that the sole issue for the Trial Court was whether Respondent’s claim was brought within the applicable statute of limitations. In support of their motion for summary judgment, Appellants argued that the action was governed by the three-year statute of limitations set forth in section 15-3-530. Section 15-3-530 states that “an action upon a contract, obligation, or liability express or implied, **excepting those provided for in Section 15-3-520**” shall be brought within three years. S.C. Code Ann. § 15-3-530 (1976) (emphasis added by Respondent). Respondent argued that the twenty-year statute of limitations set forth in section 15-3-520 applied to the action. Section 15-3-520(a) provides that the statute of limitations for an action upon a “contract in writing secured by a mortgage of real property” is twenty years. S.C. Code Ann. § 15-3-530 (1976).

The Trial Court properly determined that S.C. Code Ann. § 15-3-520 and its twenty-year statute of limitations applied because Respondent’s claim is based upon a “contract in writing

secured by a mortgage of real property.” The face of the Note expressly provides, under the heading entitled “Pledge of Collateral”, that the Note is secured by a mortgage of real property. This fact alone provides a sufficient basis to affirm the Trial Court’s ruling that the twenty-year statute of limitations governs and Respondent’s action was brought within the statute of limitations.

In *Scovill v. Johnson*, 190 S.C. 457, 3 S.E.2d 543 (1939), the South Carolina Supreme Court addressed whether the twenty-year statute of limitations (formerly Section 387 of the 1932 Code) applied to an action against the endorser of a promissory note that was secured by a mortgage of real property. In *Scovill*, the court found that where the instrument in question is a “contract in writing secured by a mortgage of real property,” the burden of demonstrating why the twenty-year limitations period does not apply falls on the party claiming the application of the shorter limitations period. *Id.* at 457. The *Scovill* court stated that the party arguing for the shorter statute of limitations “would have to first overcome the twenty-year statute before claiming the benefit of the six-year statute (now the three-year statute of Section 15-3-530).” *Id.* at 457. Additionally, “[i]f there is any doubt as to which of two statutes applies, that doubt must be resolved in favor of the longest period.” *Id.* The court ultimately determined that the twenty-year statute of limitation applied. *Id.*

Here, like in *Scovill*, the action is based upon a promissory note. Also, as in *Scovill*, the Appellants have not provided the court with sufficient justification to overcome the twenty-year statute of limitations. In fact, the Appellants’ appear to concede that the twenty-year statute of limitations applies because the Appellants’ brief makes no argument to the contrary. Accordingly, this Court should affirm the Trial Court’s ruling that the twenty-year statute of limitations applies and Respondent’s claim was brought within the statute of limitations.

Appellants' argument on appeal is that the Trial Court erred in considering evidence outside the scope of the pleadings and outside the scope of the Consent Order. Both of these arguments are without merit. First, Rule 10(c), SCRCP, in relevant part, states "[a] copy of any plat, photograph, diagram, **document, or other paper** which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." (emphasis added); *see also Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) ("A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such pleading."). Here, the Note was attached to the Complaint as "Exhibit A." *See* R. pp. 10-11. The Note, under the heading entitled "Pledge of Collateral", indicates that the Note is secured by a mortgage. *Id.* As such, Appellants' assertion that "the [C]omplaint is devoid of any allegation that the promissory note was secured by a mortgage on real property" is false. *See* Brief of Appellant at 4.

The Complaint contained the necessary information to place Appellants and their counsel on notice that the Note was secured by a mortgage. "The purpose of the pleadings is to place the adversary on notice as to what the issues are." *Langston v. Niles*, 265 S.C. 445, 455, 219 S.E.2d 829, 833 (1975). The Complaint in this case did just that. It set forth that the action was based upon a breach of the terms of the Note. The law does not require that the complaint state with specificity each and every issue that may arise during litigation.

Appellants' alleged lack of knowledge regarding the mortgage is also completely undermined by the fact that both Appellants executed the mortgage on the same day the Note was executed. *See* R. pp. 42, 48. Clearly, Appellants knew or should have known the Note was secured by a mortgage because they both signed the Note and the mortgage on the same day. Any argument to the contrary is an attempt to distract the court from the agreed upon issue in this

case. The Note expressly states that it is secured by a mortgage of real property. Based on the foregoing, this Court should reject Appellants' argument that the Complaint failed to put the Appellants on notice that the Note was secured by a mortgage.

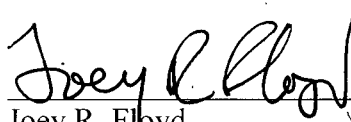
This Court should also reject Appellants' argument that the Trial Court considered evidence beyond the scope of what the parties agreed to in the Consent Order. The Consent Order states that the Trial Court would decide the case "based on the pleadings of record filed with the Greenville County Clerk of Court, **Memoranda in Support of [the parties'] respective positions** and Affidavits, if any, filed by the Parties." R. p. 18 (emphasis added). Despite the language allowing the parties to present arguments in supporting memoranda, Appellants argue that the Respondent exceeded the scope of the Consent Order in doing so. Addressing this argument in the Order Denying Appellants' Motion to Reconsider, Judge Stilwell stated that "the Court relied upon only those documents, memoranda of law, affidavits and pleadings which were provided by the respective parties. The ruling was made strictly within the provisions of Rule 56 of the South Carolina Rules of Civil Procedure." R. p. 71. Once again, Appellants' argument is nothing more than an attempt to distract the Court from the real issue in this case.

CONCLUSION

Respondent respectfully requests that this Court affirm the Trial Court's decision that Respondent's claim was brought within the applicable statute of limitations. The Plaintiff's action is clearly based upon a "contract in writing secured by a mortgage of real property." Therefore, the twenty year statute of limitations applies. Furthermore, the Complaint, along with the exhibits thereto, put the Appellants on notice that the Note was secured by a mortgage. Finally, the Trial Court did not exceed the scope of the Consent Order in reaching its decision.

Based on the foregoing, this Court should affirm the Trial Court's decision in favor of the Respondent.

BRUNER, POWELL, WALL & MULLINS, LLC

A handwritten signature in cursive script, appearing to read "Joey R. Floyd", is written over a horizontal line.

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February 19, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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The Honorable Robin B. Stilwell

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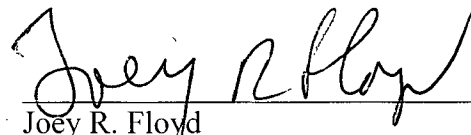
First Citizens Bank and Trust Company, Inc. Respondent,

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Ronald D. Taylor and Ted D. Smith.....Appellants.

CERTIFICATE OF COUNSEL

I, Joey R. Floyd, Esquire, do hereby certify that the Brief of Respondent First Citizens Bank and Trust Company, Inc. complies with Rule 221(b), SCACR.



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THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

I, Rita DeCarlis, with the law firm of Bruner, Powell, Wall & Mullins, LLC, Attorneys for the Respondent, do hereby certify that on this 2nd day of March, 2016, I served Respondent, First Citizens Bank and Trust Company's, **Brief of Respondent** upon counsel for the Appellant by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

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March 2, 2016
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