

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case NO. 2017-002223

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SC Court of Appeals

Mark Wilson

Appellant

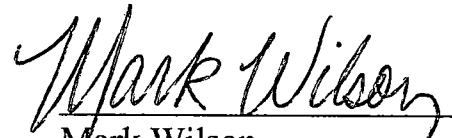
v.

Keith Jayma

Respondent

AMENDED BRIEF OF APPELLANT

June 28, 2018



Mark Wilson
2506 Kings Farm Way
Indian Trail, NC 28079
Appellant

TABLE OF CONTENTS

Statement of Issues, Analysis and Facts	pages 1-10
I. Sealed Instrument, the “CONTRACT”	pages 1-3
II. Sealed Instrument, “Title to Real Estate”	pages 4-5
III. Sealed Instrument, the “Sun Trust Credit Line Mortgage”	page 6
IV. Sealed Instrument, “Mortgage of Real Property”	page 7
Table of Authorities	page 8
I. Cases	page 8
II. Statutes	page 8
Conclusion	page 9-10

I. Sealed Instrument, the "CONTRACT"

In his order granting summary judgment to Respondent Jayma, dated September 22, 2017, Judge Hayes erred when he stated on page 5 of 8, the very last paragraph, "There is no evidence "that", continued on page 6 of 8, "Jayma signed any "written contract secured by a mortgage." That properly executed written "CONTRACT", as prepared and signed by the Appellant, and was signed and "SEALED" by Respondent Jayma, the word "Sealed" is under his signature and created a sealed instrument, and was first admitted into evidence as an exhibit by attorney Keith Martens at the Appellant's deposition on 7/5/17. That "CONTRACT" only names two parties. The Appellant generated that Contract in its entirety and the Respondent agreed to it and sealed the instrument. The Appellant is a signatory of that Contract. Respondent Jayma's seal is affixed to that "CONTRACT" and Judge Hayes should have considered this evidence and the law that is subject to the 20 year statute of limitations for actions upon sealed instruments, Title 15 Chapter 3 Section 15-3-520, SC Section 15-3-520(a) and Section 15-3-320(b). This document has the word "sealed" under the Respondent's signature. A sealed instrument is defined as "an instrument to which the bound party has affixed a personal seal", Black Law Dictionary (9th Ed. 2010.) The courts look to the attestation on the face of the sealed document. Respondent Jayma successfully secured a \$1 million mortgage for his 2nd home as he called it, or as Judge Hayes called it, the "SPEC" Home, using this "CONTRACT" and the "specification sheet" at First Charter Bank. Appellant's farm was collateralized to finish the "CONTRACT" house. Attorney David Cook entered this "CONTRACT" for its second time into evidence as his first of three arguments, on page 14, lines 19 through 24; second argument, page 14, on line 25, SC 15-3-520(b); and thirdly, page 15 lines 3-23, as prescribed in 36-2-725; continued on the entire pages of 15, 16, 17, 18, 19, 20, and page 21 lines 1 and 2 of the 8-23-17 transcript which includes the cases and statutes that he entered.

Attorney Keith Martens presented a very poor copy of the Contract at the Appellant's deposition July 5, 2017, and admitted it into evidence as an exhibit, where the signature line for the Respondent was sealed but the Appellant's signature line was distorted and blank. Appellant alleges that his signature was fraudulently removed and in doing so, the signature line was distorted with skips, misses and blank spaces as the individual letters of the Appellant's signature were removed from that Contract signature line on this sealed instrument; to intentionally injure, defraud and deceive the Appellant

signature was fraudulently removed and in doing so, the signature line was distorted with skips, misses and blank spaces as the individual letters of the Appellant's signature were removed from that Contract signature line on this sealed instrument; to intentionally injure, defraud and deceive the Appellant and to provide false, incomplete, fraudulent and misleading information to the bank for the purpose of applying for and successfully securing a one million dollar loan based on the Contract.

The Appellant was HARMED from the written CONTRACT under seal:

- (1) That "CONTRACT" made payments to the Appellant as the work progressed on the home, including the very last payment that would be issued after both parties of the CONTRACT signed a written affidavit; that all bills had been paid. That affidavit was never signed, however Respondent Jayma was able to convince the bank to issue a final official bank check that had the Appellant's name on it.

Respondent Jayma forged the Appellant's name (entered into evidence by attorney Keith Martens at the Appellant's deposition on 7-15-17 and again entered as evidence by attorney Keith Martens on page 9 lines 9 through 25, page 10 lines 1 through 12, and page 12 lines 6, 7, and 8 of the transcript) and deposited that money in Respondent's own account.

- (2) Respondent's wife, Diana Jayma, was advertising the home for sale as a licensed Real Estate Agent at 8180 sq ft for \$1.89 million, a 50 percent increase in the heated sq ft from the "CONTRACT" specification "per plan" of 5,469 sq ft. That "CONTRACT" allowed more time and more money for the Contractor (Appellant) for any additions to the home, there was a 50 percent increase from the original "CONTRACT" price and the Contractor (appellant) lost his entire 63 acre farm to Respondent Jayma, as the farm was collateralize to complete the Respondent's "2nd home as financed." If the harm is from a written contract under seal, then South Carolina has a 20 year statute of limitations to file a lawsuit.

In Judge Hayes's Order on page 1 of 8, he states, "Wilson would serve as" and continued on page 2 of 8, "general contractor, overseeing construction of the "SPEC" home, while Jayma would secure financing for the project". Jayma has admitted to Appellant

3 times in his faxes that this was “his 2nd home as financed” and on one occasion said it was to be his permanent home. Respondent Jayma was a mortgage lender doing business as International Mortgage Services. The Judge’s written order is the very first time that it was admitted in writing that this home was a “SPEC” home and Appellant alleges Respondent Jayma has committed mortgage fraud to obtain the \$1million loan at First Charter. Evidence that this was a “SPEC” home was also admitted in Appellant’s deposition on 7-5-2017 by questions asked specifically by Attorney Martens.

II. Sealed Instrument, "Title to Real Estate"

Secondly, Judge Hayes erred when he dismissed the Appellant's sealed instrument, the November 4, 2005 document "Title to Real Estate", that was executed under seal; "Signed, Sealed and Delivered in the Presence of" and the law that is subject to South Carolina's 20 year statute of limitations for actions upon sealed instruments provided by Title 15 Chapter 3 Section 15-3-520, SC Section 15-3-520(a) and SC Section 15-3-520(b). The Courts look to the attestation on the face of the document. A sealed instrument is defined as "an instrument to which the bound party has affixed a personal seal," Black Law Dictionary (9th Ed. 2010.)

The Appellant met attorney Blackmon Huckabee's paralegal, Greta Neal, in the parking lot at Honda Cars of Rock Hill, not at the office of the law firm of Blackmon Huckabee. This was entered into evidence by attorney Keith Martens, page 7 lines 24 and 25, page 8 lines 1-13, and exhibit B of the affidavit, of the transcript.

- (1) Attorney Blackmon Huckabee was not present nor did the Appellant have an attorney present when Greta Neal presented the "Title to Real Estate" dated 11-05-2005 to the Appellant in the parking lot. There was never an attorney present representing the Appellant. This was a property transaction, where the entire 63 acre farm was transferred to Respondent Jayma unencumbered by the law firm of Blackmon Huckabee. This was entered into evidence by attorney Keith Martens page 10 lines 12, 13, 14 and 15 of the transcript.
- (2) There was no witness present in the parking lot as attested by Witness #1, Lula Hardin who has fraudulently witnessed the Appellant's signature. This was entered into evidence by attorney David Cook, page 25 lines 24 and 25 of the transcript.
- (3) In his Order, Judge Hayes called the Appellant's 63 acre Farm the "Disputed Tract". The description page of the "Disputed Tract" was not presented to the Appellant by the law firm of attorney Blackmon Huckabee in the parking lot nor was it "EVER" initialed or identified by the Appellant as recorded by the law firm of Blackmon Huckabee. This was entered into evidence by attorney Keith Martens on page 8 lines 7 through 12 of the transcript.

(4.) There was no consideration given to the Appellant as attested to and recorded by the law firm of Blackmon Huckabee for this land transaction.

The Appellant sought to convey and it was agreed that 25 acres would be the sole subject of the conveyance to Respondant Jayma to allow him to secure partnership financing. This was entered into evidence by attorney Keith Martens, page 7 lines 18 and 19; page 8 lines 10, 11 and 12; and page 11 lines 6 through 9 of the transcript. This 63 acre farm, the "Disputed Tract", was fraudulently conveyed to Respondant Jayma unencumbered. This sealed instrument was admitted into evidence as an exhibit at the Appellant's deposition by attorney Keith Martens on 7-5-2017. The Appellant's signature on this 11-05-2005 document was executed under seal and should have been considered by Judge Hayes and the law that is subject to South Carolina's 20 year Statute of Limitations, Title 15 Chapter 3 Section 15-3-520, SC Section 15-3-520(a) and SC Section 15-3-520(b). A sealed instrument is defined as "an instrument to which the bound party has affixed a personal seal," Black Law Dictionary (9th Ed. 2010.) This sealed instrument for a land transaction was fraudulently executed and recorded by the law firm of Blackmon Huckabee. This sealed instrument was also presented as evidence on the complete pages 25 and 26, and page 27 lines 1-20 of the transcript and a copy of the deed was attached to the complaint by attorney David Cook. Attorney Martens quoted McKinnon versus Summers, page 23 lines 20-25, page 24 lines 1-6, and the case by admitted by Attorney Dave Cook, page 23 lines 9-19 in which a longer statute of limitations applied than the standard three year statute.

III. Sealed Instrument, the "SunTrust Credit Line Mortgage"

Thirdly, Respondent Jayma's "SEAL" is affixed to the June 7, 2006 instrument, the "SunTrust Credit Line Mortgage" where 38 acres of the 63 acre farm were erroneously and fraudulently conveyed to Respondent Jayma under "SEAL", which created a sealed instrument. The S.C. 20 year statute of limitations for actions upon a sealed instrument is applicable, Title 15 Chapter 3 Section 15-3-520 and SC Section 15-3-520(b). In his Order, Judge Hayes called the Appellant's 63 acre Farm the "Disputed Tract". Respondent Jayma used the "Disputed Tract" to obtain a mortgage from SunTrust Bank. This SunTrust Credit Line Mortgage, dated 6-7-2006 was admitted into evidence as an exhibit at the Appellant's deposition by attorney Keith Martens on 7-5-2017 and was discussed at length between attorney Martens and the Appellant where Martens claimed Respondent Jayma had paid off the original mortgage personally that was secured by the "Disputed Tract" and Respondent Jayma then used his personal home as collateral to acquire a "new" equity line that did not use any part of the disputed tract. Judge Hayes asked for clarification of the dollar amount of this mortgage at the hearing, page 8, lines 17 and 18 of the transcript. Appellant contended during his deposition that SunTrust Bank had forgiven and therefor "Satisfied" the \$194,000 mortgage (40 days after Appellant filed his lawsuit which included SunTrust Bank on April 5, 2012) to be dismissed from the Appellant's Lawsuit and they were dismissed, on May 15, 2012, by the Appellant's Attorney David Cook. See copy of that "Satisfaction of Mortgage". This was also admitted into evidence by attorney David Cook on page 20 lines 16 through 25, and page 21 lines 1 and 2 of the transcript. Attorney Keith Martens entered into evidence that Respondent "can't ascertain the amount of his damages until the mortgage has been paid off", page 22 lines 2 and 3 as evidenced in Exhibit B of the transcript. At Appellant's deposition Attorney Keith Martens jumped up and out of his seat and exclaimed loudly, "Are you calling me a liar!" Respondent Jayma's SEAL is affixed to this SunTrust Credit Line Mortgage and was admitted into evidence as an exhibit during the Appellant's deposition on 7-5-2017 and should have been considered as evidence by Judge Hayes and the law that is subject to South Carolina's 20 year Statute of Limitations for sealed instruments provided by Title 15 Chapter 3 Section 15-3-520, SC Section 15-3-520(a) and SC Section 15-3-520(b).

IV. Sealed Instrument, "Mortgage of Real Property"

The April 18, 2005 document "Mortgage of Real Property" was a sealed instrument between the Appellant and Respondent's Jayma and Streeter. This "Sealed Instrument" was admitted into evidence as an exhibit by Attorney Keith Martens at the Appellant's deposition on 7-5-2017 and proved that the Appellant did not identify the property, I.E. the "Disputed Tract," as he did not initial the description page of that "Sealed" document as executed and attested by Attorney Blackmon Huckabee. This sealed document and evidence should have been considered by Judge Hayes. Judge Hayes erred when he did not recognize the evidence that the Appellant did not initial the description page of the Mortgage of Real Property (Promissory Note) that was executed under seal as attested to in Appellant's deposition and the law that is subject to South Carolina's 20 year statute of limitations afforded under Title 15 Chapter 3 Section 15-3-520, and SC Section 15-3-520(a) and SC Section 15-3-520(b) that is applicable in the Appellant's case. A sealed instrument is defined as "an instrument to which the bound party has affixed a personal seal," Black Law Dictionary (9th Ed. 2010.)

TABLE OF AUTHORITIES

I. Cases

1. Lyons V Fidelity National Title Insurance Company 2015 WL 7756187 S.C. Ct. App Dec 2, 2015)
2. Lyons 320 S.E. 2nd 464
3. Carolina Marine Handling, Inc V Lasch 363 SC 169
4. Suttles V Wood 312 S.E. 2nd 574
5. Treadway 479 S.E.2nd 849
6. South Carolina Department of Social Services V Winyah Nursing Homes 320 S.E. 2nd 464
7. Lyons Carmichael
8. Lyons V. Fidelity National Title, 415 S.C. 115 (Ct. App 2015)
9. McKinnon verses Summers

II. Statutes

SC Section 5-3-520
SC Section 5-3-520(a)
SC Section 5-3-520(b)
SC Section 15-3-340
SC Section 36-2-725

CONCLUSION

Appellant argues that his lawsuit was timely, and Judge Hayes should not have dismissed the Appellant's case using:

- (1) the handwritten letters and faxes of the Appellant and
- (2) the letter of the Appellant's attorney Sean Phelan addressed to the Respondent demanding the return of the family farm to the Appellant on 9-12-08, which was admitted into evidence by attorney Keith Martens, page 11 lines 13 and 14 of the transcript;
- (3) the standard 3 year statute of limitations thereby disregarding and not applying the SC law on "Sealed Instruments" including the "CONTRACT", that were entered as evidence in exhibits by attorney Keith Martens at the Appellant's deposition on 7/5/12, and entered again as evidence by attorney Keith Martens and David Cook, in the transcript on 8/23/17, that are afforded by law under Title 15 Chapter 3 Section 15-3-520 and SC Section 15-3-520(a) and SC Section 15-3-520(b) and are subject to the 20 year statute of limitations for actions upon sealed instruments, and SC statues 15-3-340 and 36-2-725, to grant summary judgement in favor of Respondent Jayma.

Therefore, based on applicable South Carolina law and South Carolina's 20 year statutes of limitations for harm caused by a written contract under seal, Judge Hayes' decision should be reversed.

The actions of the Respondent on a "Sealed Instrument" under SC law, were fraudulent, deceptive, unlawful and criminal and were injurious to the Appellant and the facts were admitted into evidence in the transcript on 8/23/2017 and the Appellant's deposition on 7/5/2017.

The Actions of the law firm of Blackmon Huckabee on a "Sealed Instrument" under SC law, were fraudulent, deceptive, and unlawful and were injurious to the Appellant and the facts were admitted into evidence in the transcript on 8/23/2017 and the Appellant's deposition on 7/5/2017.

The deed that the Appellant gave to the Respondent unencumbered, is a mortgage so that Respondent could get a loan using the Appellant's farm which Respondent did, a SunTrust Equity Line Mortgage on 6/7/2006, as admitted into evidence at Appellant's deposition on 7/5/2017 and into the transcript page

20 lines 16-25, page 21 lines 1-2, and page 22 lines 2-3 of Exhibit B of the transcript and was a "Sealed Instrument" subject to SC's 20 year statute of limitations.

All the foregoing statements constitute genuine issues of material fact in dispute. Therefore, Judge Hayes' decision to dismiss Appellant's lawsuit in its entirety should be reversed.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

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DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order filed September 27, 2017;
2. Complaint;
3. Amended Complaint;
4. Answer;
5. Transcript of Hearing on August 23, 2017, pp 4-29;
6. Transcript of Appellant's deposition and testimony on July 5, 2017;
7. Sealed Instrument, the "CONTRACT";
8. Sealed Instrument, "Title to Real Estate";
9. Sealed Instrument, the "SunTrust Credit Line Mortgage";
10. Sealed Instrument, "Mortgage of Real Property";

11. Letter of Judge John Hayes to W. Keith Martens, Esq. on August 24, 2017;
12. Exhibit B of the affidavit of the transcript;
13. All listing agreements, ledgers and rosters for the sale of the home, CMLS #556953;
14. The original house plan, Waystrode E-3990;
15. Carolina Buyers Realty and Diana Jayma's advertisement for 8180 heated square feet, Volume 20 Issue 3, Estates and Homes;
16. The Specification Sheet for the original home plan;
17. The Cost Estimate for the original home plan;
18. The Forged Official First Charter Bank check;
19. Satisfaction of Mortgage for the Sun Trust Credit line.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 28, 2018



Mark Wilson
2506 Kings Farm Way
Indian Trail, NC 28079
Appellant

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John C. Hayes, III, Circuit Court Judge

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CERTIFICATION

Appellant's Designation of Matters to be included in the Record on Appeal contains no matter which is irrelevant to the appeal.

June 28, 2018



Mark Wilson
2506 Kings Farm Way
Indian Trail, NC 28079
Appellant

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CERTIFICATE OF MAILING

I, Mark Wilson, Appellant, hereby certify that this 28th day of June, 2018, served a copy of the Ammended Initial Appellant's Brief to be Included in the Record on Appeal upon Walter Keith Martens, attorney for Respondent by mailing a copy thereof, postage prepaid to the address indicated below:

Walter Keith Martens, Esquire
PO Box 10940
Rock Hill, SC 29731
Attorney for Respondent

M. Wilson
6 Kings Farm Way
Carr Trail, N.C. 28079

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SC Court of Appeals

S. C. Court of Appeals
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