

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-0931
Appellate Case No. 2012-212732

Thaddeus F. Segars, Appellant,

v.

Fidelity National Title Insurance Company, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

1. Was the trial court correct in finding that Appellant's claims are barred by the statute of limitations, because, using an objective standard, he discovered or should have discovered the facts underlying his Complaint at the time of the issuance of his title insurance policies?

2. Was the trial court correct in finding that Appellant was not a bona fide purchaser for value, because he was charged with record notice of all matters available as of the date of the issuance of his title insurance policies?

3. Is it proper for this court to affirm the trial court's ruling on the basis of lack of jurisdiction due to insufficiency of process and insufficiency of service of process, as argued by Respondent during the hearing on the Motion to Dismiss?

STATEMENT OF THE CASE

On February 24, 2011, Appellant filed his Complaint in the case currently pending before this Court. The Complaint includes claims for (1) breach of contract, (2) declaratory judgment, and (3) vicarious liability. On April 15, 2011, Respondent filed Motions to Dismiss pursuant to Rules 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6) of the Rules of Civil Procedure and a qualified Answer, not waiving the right to assert any of the alleged Rule 12(b) defenses. Appellant served an Answer to Motion to Dismiss on or about May 20, 2011, in which he states, among other items, the following: (1) "It is nearly impossible for a prose [sic] Plaintiff to know and understand all rules of civil

procedure.” and (2) “The Plaintiff wants the court to understand that his former attorney, Mike Mogil, was asked verbally and by numerous e-mails, to not allow time to file run its course.” (R. p. 23).

On April 25, 2012, the Honorable Carmen T. Mullen heard Respondent’s Motion to Dismiss, and on May 24, 2012, the Court entered an Order granting Respondent’s Motion.

Appellant served and filed his Notice of Appeal on July 18, 2012. On August 21, 2012, the Clerk for the Court of Appeals notified Appellant that the Notice was not timely filed pursuant to Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules and offered Appellant the opportunity to file a motion to file out of time within ten days of the August 21, 2012 letter. On August 30, 2012, Appellant filed and served his Motion to File Appeal Out of Time, which was granted on November 13, 2012. Appellant ordered the transcript on November 26, 2012. Appellant filed and served his Initial Brief on February 23, 2013, after receiving the transcript on January 24, 2013.

Appellant references two prior lawsuits in his Statement of the Case; however, those cases are separate actions (although based on the same set of transactions) and are not part of the Complaint in the case pending before this Court. (R. pp. 25-53; R. pp. 85-86).

STATEMENT OF THE FACTS

The two lots at issue are located in a development known as Singleton Beach Place Extension, Hilton Head Island, Beaufort County, South Carolina. (R. p. 7, ¶ 3). On September 7, 1995, a Declaration of Covenants, Conditions, and Restrictions was

recorded for Singleton Place in Book 801, Page 715, and supplemented in Book 945, Page 1792, Book 1082, Page 898, and Book 1887, Page 2282 of the Office of the Register of Deeds of Beaufort County, South Carolina. (R. p. 11, ¶ 15). These Covenants, Conditions, and Restrictions establish that no residence shall be constructed with square footage of less than 2,500 square feet. (R. p. 11, ¶ 15).

On January 29, 2003, a plat was recorded in Plat Book 91, Page 90 of the Office of the Register of Deeds for Beaufort County, South Carolina. The January 29, 2003 plat is titled "Boundary Reconfiguration of: Singleton Beach Place Extension Comprising Parcels: 10, 10A (2 Parcels), 10B, 10C, 10D, 10H, 20N (2 Parcels), 350 & 389 Hilton Head Island, Beaufort County, South Carolina". (R. p. 8, ¶ 6).

On November 20, 2003, a corrective plat was recorded in Plat Book 96, Page 102 of the Office of the Register of Deeds for Beaufort County, South Carolina. (R. p. 9, ¶ 8). The November 20, 2003 plat is titled "Boundary Reconfiguration of: Singleton Beach Place Extension Comprising Parcels: 10, 10A (2 Parcels), 10B, 10C, 10D, 10H, 20N (2 Parcels), 350 & 389 Lot 15 Singleton Beach Place, Hilton Head Island, Beaufort County, South Carolina". (R. p. 9, ¶ 8). This November 20, 2003 plat removes the future OCRM line depicted in the January 29, 2003 plat. (R. p. 9, ¶ 8).

On December 15, 2003, a second corrective plat was recorded in Plat Book 96, Page 160 of the Office of the Register of Deeds for Beaufort County, South Carolina, entitled "Boundary Reconfiguration of: Singleton Beach Place Extension Comprising Parcels: 10, 10A (2 Parcels), 10B, 10C, 10D, 10H, 20N (2 Parcels), 350 & 389, Lot 15 Singleton Beach Place, Hilton Head Island". (R. p. 9, ¶ 10). The December 15, 2003 corrective plat states on its face that "this plat supersedes plat recorded in Plat Book 91 at

Page 90 and Plat Book 96 at Page 102". The December 15, 2003 plat, just as the November 20, 2003 plat, does not include the future OCRM line depicted on the January 29, 2003 plat. (R. pp. 9-10, ¶ 10).

Several months after the recording of the second corrective December 15, 2003 plat, by that deed dated May 24, 2004, Appellant obtained title to Lot 2 of Singleton Beach Place Extension, as evidenced by that deed recorded on June 23, 2004 in Book 1976, Page 1964 of the Office of the Register of Deeds for Beaufort County, South Carolina. (R. p. 7, ¶ 3). The day after this conveyance, on June 24, 2004, Respondent issued an ALTA Owner's Title Insurance Policy to Appellant for Lot 2 in the amount of \$1,600,000.00. (R. p. 10 ¶ 13; R. p 4, ¶ 1).

Also after the recording of the second corrective plat in December 15, 2003, by that deed dated July 23, 2004, Appellant (along with Frederick J. Cerrato, Steven M. Cerrato, Kenneth C. Oliver, and Steven M. Carb, d/b/a Lot 3, Singleton Beach, a Joint Venture) obtained title to Lot 3 of Singleton Beach Place Extension, as recorded on August 9, 2004 in Book 1999, Page 1940 of the Office of the Register of Deeds for Beaufort County, South Carolina. (R. pp. 7-8, ¶ 3). On the same date the Lot 3 deed was recorded, on August 9, 2004, Respondent issued an ALTA Owner's Title Insurance Policy to Appellant and his co-owners in the amount of \$1,800,000.00. (R. p. 10, ¶ 13; R. p. 4, ¶ 1). Of the grantees on this Lot 3 deed, only Appellant is a party to the current lawsuit.

Appellant submitted a claim to Respondent pursuant to the title insurance policies based on the fact that the building envelopes for Lots 2 and 3 are not sufficient to support a residence of at least 2,500 square feet and claiming that the properties are "uninsurable"

in the amounts of the Policies. (R. pp. 11-12, ¶¶ 17 & 22). Respondent denied coverage for the claim of damages resulting from the “inability to build residential for Lot 2 and Lot 3”, as the Policies both except the Conditions and Restrictions and plats of record (specifically, the December 15, 2003 plat). (R. p. 12, ¶ 23).

Although not the cases currently pending before this Court, Appellant filed his first action against Respondent on July 16, 2008, known as Beaufort County 2008-CP-07-02579 (“the First Lot 3 Lawsuit”) and a second action on August 4, 2008, known as Beaufort County 2008-CP-07-02791 (“the First Lot 2 Lawsuit”). (R. pp. 4-5, ¶ 3; R. pp. 25-53; R. pp. 85-86). As these cases are not referenced at all in the 2011 Complaint and this is the appeal of an Order allowing a Motion to Dismiss, Respondent does not believe the facts and allegations of these two prior actions are before this Court. (R. pp. 85-86).

On February 24, 2011, Appellant filed the current action. (R. pp. 6-14). Although not facts contained in the 2011 Complaint, Appellant alleges in his Initial Brief that both Lot 2 and Lot 3 went into default in 2007 and were subsequently foreclosed such that he is not currently the owner of either lot. (Appellant Initial Br. p. 8). Furthermore (and again, not contained in the 2011 Complaint), Appellant alleges that the building envelope issue created by the removal of the OCRM line in the corrective 2003 plats has now been resolved, such that a 2,500 square foot residence can be constructed on each lot. (Appellant Initial Br. p. 8; R. p. 63, lines 21-23). Appellant alleges that his lots were not marketable prior to the September 2010 moving of this OCRM line, thus causing him loss. (Appellant Initial Br. p. 8).

Appellant also includes several additional pages of facts that Respondent does not believe are properly before this Court, as matters considered on a Motion to Dismiss

should be limited to those alleged in the Complaint. (R. pp. 85-86). Moreover, these are facts not previously raised by (or, therefore, preserved by) Appellant and, therefore, had no effect on the trial court's ruling. (Appellant Initial Brief pp. 7-10; R. pp. 85-86; *Noisette v. Ismail*, 304 S.C. 56, 403 S.E.2d 122 (S.C. 1991)). At least one of the facts contained in Appellant's Brief is directly contrary to a fact alleged in the Complaint. ("Appellant avers that he has never received the original insurance policies for either Lot.") (Appellant Initial Br. p. 9). ("Subsequent to closing on Lot 2 and Lot 3 Segars received said policies...") (R. p. 13, ¶ 33). Particularly relevant to the issues before this Court, Appellant's Brief alleges a date range for the claims made by Appellant to Respondent; however, it is important to note that none of these dates are included in the original Complaint and were not considered by the trial court. (Appellant Initial Br. pp. 9, 12). In fact, the last dates referenced at all in the Complaint are the dates on which the Policies were issued: June 23, 2004 and August 9, 2004—the same dates on which the trial court based its dismissal (R. p. 10, ¶ 13; R. p. 4, ¶ 1).

ARGUMENTS

I. The trial court properly dismissed Appellant's Complaint pursuant to Rule 12(b)(6) of the Rules of Civil Procedure, because all claims are barred by the statute of limitations.

Appellant does not dispute that the trial court correctly applied S.C. Code Ann. § 15-3-530(1) to the claims in Appellant's Complaint in determining whether dismissal pursuant to Rule 12(b)(6) was appropriate. Rather the basis for Appellant's appeal is that the granting of Respondent's Motion to Dismiss was premature because Appellant appears to argue that discovery may be necessary to determine the trigger date. Appellant is incorrect in this assertion. Because each of Appellant's three claims are

barred by the applicable statute of limitations, the trial court (and, thus, this Court) never reach the issue of whether or not the claims would survive a Rule 12(b)(6) motion based on the failure of the Appellant to state a claim upon which relief could be granted. No relief can be granted on any of these claims simply because they are all time barred.

A. The trigger date for the statute of limitations is the date of the issuance of the Policies, because all circumstances of which Appellant subsequently complained were in existence as of this date.

Appellant clearly states in his Complaint that he was “provided with an ALTA Owner’s Title Insurance Policy dated June 23, 2004 for Lot 2 and August 9, 2004 for Lot 3”, which are almost exactly the same dates on which Appellant purchased the two properties. (R. p. 10, ¶ 13). These two dates are also the latest dates referenced in Appellant’s Complaint. The circumstances that ultimately led to Appellant submitting claims to Respondent pursuant to the Policies were all in existence as of the date of the closings and issuance of the Policies in 2004. The Covenants, Conditions, and Restrictions, as well as the 2003 plats, were all of public record, and the fact that the Covenants required a minimum square footage in excess of the building envelope allowed by the OCRM line was readily available for anyone to discover upon reasonable inquiry.

It is well-established that “the three-year statute of limitations found in section 15-3-350 begins to run when the underlying cause of action reasonably ought to have been discovered. Thus, the three-year clock starts ticking on the ‘date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.’” *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575-76, 593 S.E.2d 624, 627 (S.C. Ct. App. 2004) (citations omitted).

Appellant's argument that a ruling under this statute is premature is mistaken, because the determination of the date a party knew or should have known is objective rather than subjective. *Id.* The trial court properly determined that when this particular Appellant actually learned of the 2003 plats or submitted a claim based on the 2003 plats is irrelevant. The trial court only needed to consider "whether the circumstances of the case would put a person of common knowledge and experience on notice." *Id.* (citing *Young v. S.C. Dep't of Corr.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (S.C. Ct. App. 1999)). A person of common knowledge and experience would be on notice when a reasonable inquiry of the public records would reveal the potential issues.

Appellant also alleges that the proper time to start the three-year clock was the date that Appellant first discovered the terms of the Policies. Again, the standard is not subjective—the objective standard is when Appellant knew or should have known of the issues underlying his claims. First, the terms of the Policies had nothing to do with the underlying claims—the claims were based on a conflict created by the public records. (R. pp. 11-12, ¶ 17). Appellant does not allege that had he known the Policies' terms, he would not have purchased the properties; he alleges that if he had known of the conflicting restrictions, he would not have purchased. (R. p. 12, ¶ 19). Second, assuming, *arguendo*, that the term of the Policies could ever affect that statute of limitations, a reasonably prudent person should know the terms of the policy as of the date the policy is issued. Allowing Appellant to wait an indefinite amount of time before reviewing an insurance policy to discover its terms would be contrary to the objective reasonable diligence standard used to determine when the statute of limitations begins.

Lastly, the terms of the Policies at issue in this case are all terms related to public records, for which Appellant was charged with record notice.

With respect to the vicarious liability claim, although it is not clear from the Complaint, viewing the facts in the light most favorable to Appellant, it appears that this is, in essence, a malpractice or negligence claim, which is also a three-year statute, although it would be governed by S.C. Code Ann. § 15-3-530(5) and § 15-3-535. Setting aside any alleged agency issues (which are not properly before this Court), the trigger date should remain the same, as the matters which led to this alleged claim were also all of public record as of the date of the closings, which was the last act of the attorney. Accordingly, the trial court also properly found that these claims were barred by the statute of limitations.

B. Appellant is not entitled to equitable tolling of the statute of limitations.

In his Initial Brief, Appellant argues that he is entitled to equitable tolling, because he actively pursued his remedies by filing a defective pleading during the statutory period and was unable to obtain vital information. (Appellant Initial Br. pp. 12-13). All vital information was of public record as of the dates of purchase in 2004—nothing contained in the Policies could change the public records. Even the case cited by Appellant does not support the rare application of the theory of equitable estoppel to the facts in the present case. The Supreme Court's exception allowing for equitable tolling in the case of *Hooper v. Ebenezer Senior Servs. & Rehab Ctr.* dealt largely with the public policy and interests of justice in the public being able to rely on public records. 386 S.C. 108, 112, 687 S.E.2d 29, 34 (S.C. 2009). *Hooper* is blatantly distinguishable, because the Respondent raised service issues when it was Respondent's own improper registering

with the Secretary of State that led to Appellant serving the incorrect address. The court allowed equitable tolling as a matter of public policy. While several other examples are cited in *Hooper*, none appear to mirror Appellant's situation.

If Appellant's prior 2008 lawsuits are to be considered as part of this appeal (which is denied by Respondent), this Court must then also look to the basis for the Stipulations of Dismissal filed on February 19, 2012. During the summary judgment arguments in the 2008 cases, "the [trial] Court was inclined to grant summary judgment [in favor of Respondent]". (R. p. 62, lines 4-6). The 2008 lawsuits were not filed *pro se*, and the Stipulations were not taken because of any "extraordinary event" or "extraordinary circumstance" beyond Appellant's control. *See Hooper, id.* Instead, the Stipulations were taken because the trial court indicated it was inclined to grant Respondent's Motions for Summary Judgment finding a correct denial of coverage for Appellant's claims, thereby unfavorably ending Appellant's case. Accordingly, even viewing every possible fact in the 2011 Complaint in the light most favorable to Appellant—keeping in mind that none of the facts of this paragraph are even referenced in the 2011 Complaint—Appellant is still not entitled to equitable tolling of the statute of limitations. There is no basis for Appellant's argument that the filing of the 2011 Complaint relates back to the filing of the 2008 lawsuits; however, even if such relation back were allowed, Appellant's claims would still be barred, because the statute of limitations trigger date in this case is the date Appellant obtained title to the Lots and the Policies were issued in 2004. More than three years had passed since the closings and issuance of the Policies at the time Appellant ever filed his two 2008 lawsuits.

- C. **Appellant is not a bona fide purchaser entitled to a later discovery date, 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 public records that allegedly led to his loss.**

Appellant is charged with record notice of the public records as of the date of his purchases and issuance of the Policies, because Appellant is not an innocent bona fide purchaser for value. When the question is one of record notice, there is no factual inquiry as to the date, because the date of recording speaks for itself. Furthermore, when Appellant actually learned of the 2003 plats is not the determining factor—it is when he objectively should have learned of them.

Appellant cannot be afforded the protections of a bona fide purchaser “when sufficient record notice is available to charge the purchaser with a duty to inquire which, if pursued with due diligence would have supplied him with knowledge of the rights of other parties.” *South Carolina Tax Com. v. Belk*, 266 S.C. 539, 544, 225 S.E.2d 177, 179 (S.C. 1976) (citation omitted). The Supreme Court has “denied subsequent purchasers comfort under the umbrella of a bona fide purchaser when the exercise of prudence would have avoided the difficulty.” *Id.* When all relevant matters are in the public records—specifically, in the chain of title for the subject properties—due diligence should include a title search. A party cannot claim the protections of a bona fide purchaser “where the circumstances are sufficient to put one upon inquiry, or where one might by due diligence have ascertained the facts. One is charged with notice of every fact which such inquiry and such diligence will certainly disclose.” *Kirton v. Howard*, 137 S.C. 11, 36-37, 134 S.E. 859, 1 (S.C. 1926) (citing *Black v. Childs*, 14 S.C. 312, 322

(S.C. 1880)). Although Appellant claims to have performed due diligence, there is no support for his assertion that due diligence includes reviewing only one of the plats in the chain of title (not to mention the oldest plat of the three). Due diligence is also an objective standard, and simply stating that Appellant tried and failed to find matters of public record does not make his efforts reasonable. Even when the adequacy of notice may be questionable (which is not our case), “a purchaser cannot carelessly disregard record notice of potential incumbrances” *Belk*, 266 S.C. at 544, 225 S.E.2d at 180 (finding that buyer had record notice of defects in the chain of title such that she could not claim “the lofty status of an innocent purchaser for value”). Reviewing the public records only until you find a plat that benefits the purchaser (the January 2003 plat) and not following up to determine if any subsequent plats are of record is careless disregard of the record notice.

Appellant’s primary claim, which was denied by Respondent, resulting in the present action, stems from the fact that he could not build a residence that would meet the 2,500 square foot minimum required by the Declaration because of the building envelope created by the 2003 plats. The Declaration and 2003 plats were matters of public record as of the dates of the purchases and issuance of the Policies in 2004. Accordingly, Appellant had record notice of this issue underlying his Complaint in 2004.

Appellant correctly directs this Court’s attention to the case of *Spence v. Spence*. 628 S.E.2d 869, 368 S.C. 106 (S.C. 2006). Yet, while Appellant argues that “constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the

world”, Appellant fails to fully express the Supreme Court’s opinion on record notice. 368 S.C. at 119, 628 S.E.2d at 876. The *Spence* Court continues to hold that “[t]he recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim.” *Id.* As further evidence of this proposition, the court looks to *Epps v. McCallum Realty Co.*, which held that “recording amounts to notice, whether known or unknown, because the means of information are at hand.” 139 S.C. 481, 499-500, 138 S.E. 297, 303 (S.C. 1927). The *Epps* Court adopts the harsh proposition that “it is an easy matter for a purchaser of land to ascertain at the time of his purchase [the status of title], and if he fails to do so, he should take the consequences.” *Id.* (citation omitted).

Appellant’s reliance on *Slack v. James* for the proposition that “it is not feasible to expect a buyer to be able to research the title of the property they are buying before entering into a contract” is also misguided. 614 S.E.2d 636, 639, 364 S.C. 609, 616 (S.C. 2005) (emphasis added). First and foremost, in *Slack*, the defendants/appellees were only potential purchasers—the purchase transaction never closed. Second and equally important, in *Slack*, the purchasers received misrepresentations from the sellers and real estate agents. The *Slack* case simply does not find that a party can be a bona fide purchaser for value despite record notice—it does not reference the issue of bona fide purchasers at all. Indeed, there are no other cases citing *Slack* for the language quoted by Appellant, and the cases subsequently citing *Slack* are not bona fide purchaser cases, but rather they address whether or not a question of fact exists when a buyer relies on a seller’s misrepresentation when the falsity of the representations could have been discovered through an examination of the public records. See *Coake v. Burt*, 391 S.C.

201, 705 S.E.2d 453 (S.C. Ct. App. 2010) (addressing defects in physical structures on the property that may not have been disclosed); *Moseley v. All Things Possible, Inc.* 388 S.C. 31, 694 S.E.2d 43 (S.C. Ct. App. 2010) (affirming a finding of fraud). Interestingly, Appellant does not cite a single case to support his proposition that his alleged reliance on real estate attorneys and insurance agents affords him the protections of a bona fide purchaser without notice, despite the public records.

Holding bona fide purchaser status is the only means by which Appellant could claim a statute of limitations trigger date after 2004. Unfortunately for Appellant, no excuse—not the speedy nature of residential transactions nor the reliance on attorneys and insurance agents—will allow a purchaser to reap the benefits of the bona fide purchaser status when he willfully ignores the public records. And while Appellant appears to want to argue about the reasonableness of his diligence, there cannot be a factual dispute as to diligence when using the objective standard set out by our courts. Applying this objective standard, Appellant is not a bona fide purchaser due to record notice; accordingly, his claims are all barred by the statute of limitations, which began to run in 2004.

II. The Court properly dismissed Appellant’s Complaint, pursuant to Rules 12(b)(2), 12(b)(4), and 12(b)(5) of the Rules of Civil Procedure, because the court lacked jurisdiction over Respondent due to Appellant’s insufficient process and service of process.

Although not specifically addressed in the trial court’s Order, pursuant to Rules 208(b)(2) and 220(c) of the Rules of Appellate Practice, Respondent also requests that the court affirm the trial court’s ruling on the basis that the court lacks jurisdiction over Respondent pursuant to Rule 12(b)(2), there is insufficient process pursuant to Rule

12(b)(4), and there is insufficient service of process pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure. *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 417-423, 526 S.E.2d 716, 721-725 (S.C. 2000).

- A. Appellant did not name the proper party and did not address the summons to an officer, a managing or general agent, or to any other agent authorized by appointment of law to receive service of process.**

Although the caption of the Complaint states the correct party name of Fidelity National Title Insurance Company, the Certificate of Service for the Complaint states that Appellant, *pro se*, served Respondent as follows:

Fidelity Title Insurance Company
Claims Intake Department
P.O. Box 45023
Jacksonville, FL 32232

(R. p. 57, lines 19-24; R. p. 72). Respondent notes that the body of the Certificate of Service states that it is serving the “above Response to Notice and Motion to Dismiss”; however, this Certificate was filed with the Court on March 31, 2011, before Appellant’s Answer and Motion to Dismiss were filed, so it is assumed that this was a typo and the certificate intended to refer to service of the Complaint. There is no other evidence of attempted or accomplished service in the court record. (R. p. 58, lines 16-19). The Certificate of Service does not include the name of the correct party. (R. p. 57, line 25; R. p. 58, line 1; R. p. 72). Furthermore, the summons and complaint were not directed to an officer, a managing or general agent, or to any other agent authorized by appointment of law to receive service of process as required by Rule 4(d)(3) of the Rules of Civil Procedure. (R. p. 58, lines 1-2). Appellant also failed to comply with Rule 4(d)(8) in that certified mail was not used and with Rule 4(g) in that Appellant did not attach a copy of

the return receipt or envelope to indicate whether the mailing was accepted, refused, or otherwise returned.

Appellant asserted during the Motion to Dismiss argument that Respondent waived any jurisdiction arguments by appearing in this action. (R. p. 67, lines 5-7). It is important to note, however, that the Respondent's Answer specifically states that it is filed without waiving the Motions to Dismiss filed simultaneously and that nothing contained in the Answer shall be construed as Respondent consenting to jurisdiction or waiving any service or jurisdictional defenses. (R. p. 15). Appellant did not follow the rules for service and, accordingly, the trial court properly dismissed his action pursuant to Rules 12(b)(2), (4), and (5) of the Rules of Civil Procedure.

B. Appellant never attempted or obtained service at a proper address for Respondent.

In addition to the flaws with the name of Respondent and the Rule 4(d) and Rule 4(g) defects, Appellant also failed to ever attempt service at a proper address for Respondent. The South Carolina legislature sets out a simple procedure for serving insurance companies. (R. p. 58, lines 6-10). Section 15-9-270 of the S.C. Code sets forth that service upon the South Carolina Department of Insurance is sufficient. Although Fidelity National Title Insurance Company is properly registered with the South Carolina Department of Insurance, Appellant never complied with this section of the Code. (R. p. 58, lines 11-15).

Because Appellant never accomplished proper service of Respondent, the court lacked personal jurisdiction pursuant to Rule 12(b)(2) of the Rules of Civil Procedure. Appellant simply did not follow the rules for service. Because these service issues were raised during the April 25, 2012 hearing on the Motion to Dismiss, this Court would,

therefore, be proper in affirming the trial court's dismissal on service and jurisdiction grounds. In addition, these service errors are fatal due to the passing of the statute of limitation, as counsel for Appellant stated during the hearing on the Motion to Dismiss: "clearly we are well beyond that statute of limitations today". (R. p. 67, lines 22-23).

III. Appellant's fourth argument regarding whether or not the alleged losses are covered by the Policies was not raised at the trial court and is not appropriately before this Court.

With respect to Appellant's fourth argument that the losses alleged by Appellant are covered by the Policies, this issue is outside of the scope of the trial court's Order and, therefore, is not properly before this Court. *See Noisette v. Ismail*, 304 S.C. 56, 403 S.E.2d 122 (S.C. 1991) (where the trial court does not explicitly rule on a question and the appellant fails to make a Rule 59(e) SCRCP motion to amend or alter the judgment on that ground, the issue is not properly before the court of appeals and should not be addressed). Furthermore, the trial court's Order does not grant Respondent's Motion to Dismiss because Appellant fails to state a claim upon which relief can be granted. The Order specifically states that "the Court finds that Defendant's Motion to Dismiss should be allowed, because Plaintiff's claims are all barred by the applicable statute of limitations under S.C. Code Ann. § 15-3-530(1)." (R. p. 5, ¶ 7). Although Rule 208(b)(2) allows a respondent to make arguments "asking the court to affirm on any ground appearing in the record as provided by Rule 220(c)", an appellant is not authorized to assert arguments outside the scope of the trial court's findings of fact and conclusions of law.


IV. Appellant's fifth argument regarding vicarious liability is also not appropriately before this Court.

Appellant's fifth argument is that Respondent is vicariously liable for its agent's negligent title search and/or failure to adequately disclose the terms of coverage. Again, this is not addressed in the trial court's Order and is not properly before this Court. In fact, one of the only references to the vicarious liability claim during the April 25, 2012 argument was counsel for Appellant's statement that "I have not found a case in South Carolina that has recognized a title insurance company being vicariously liable for its agents." (R. p. 65, lines 2-4). The trial court did not reach the merits of this argument or even have to make a determination as to whether or not it stated a claim upon which relief could be granted, because the trial court found that this claim, as with the other two, was barred by the statute of limitations.

CONCLUSION

The trial court properly dismissed Appellant's Complaint, because the claims stated therein are all barred by the applicable statute of limitations. Any argument by Appellant that such statute did not begin to run as of the date of the purchases and Policies is flawed, because Appellant is not entitled to the protections of a bona fide purchaser. Despite Appellant's attempts to direct this Court to consider the merits of his claims, those issues are not appropriately before this Court for consideration, because based on the facts as alleged in the Complaint, the claims are time-barred. For these reasons and the others stated herein, Respondent respectfully requests that this Court affirm the trial court's decision.

June 4, 2013.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-0931
Appellate Case No. 2012-212732

Thaddeus F. Segars, Appellant,

v.

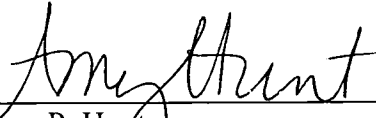
Fidelity National Title Insurance Company, Respondent.

RULE 211(b) CERTIFICATION

I, Amy P. Hunt, do hereby certify that the Final Brief of Respondent fully complies with Rule 211(b) of the Appellate Court Rules and is identical to the Initial Brief previously served except for the inclusion of references to the Record on Appeal and the correction of typographical errors.

June 4, 2013.

By: _____


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CERTIFICATE OF SERVICE

I, Amy P. Hunt, do hereby certify that on June 4, 2013, I served true and accurate copies of the Final Brief of Respondent and Rule 211(b) Certification of Compliance in the above matter, by depositing a copy of each in the U.S. Mail, first class postage prepaid, and addressed to:

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June 4, 2013.

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