

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS FOR)
THE FOURTEENTH JUDICIAL CIRCUIT)

William Hunter Youmans,)
)
Plaintiff,)

Case No. 2016-CP-03-00286

vs.)

ORDER

Mark B. Tinsley and Diane E. Tinsley,)
)
Defendants.)

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SC Court of Appeals

This order follows a Form 4 entered November 28, 2018.

This case is before the Court pursuant to the defendants' motion for summary judgment. Defendants seek summary judgment on the causes of actions stated in the plaintiff's complaint.

The Court conducted a hearing October 8, 2018 in Allendale. Attorney Cam Halford appeared for the plaintiff. Attorneys Mark Tinsley, Woody Gooding, and Blake Hewitt appeared for the defendants.

The Court grants the motion for summary judgment because, as explained below, the plaintiff's complaint relies on language that is invalid as a matter of law.

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This case arises out of a real estate transaction that closed in September of 2015. That transaction involved the sale of land from Martin Youmans to Mark and Diane Tinsley. Martin Youmans is the plaintiff's brother. These facts are not disputed.

Martin gained ownership of this land in a deed from his father in December of 1988. This deed purported to reserve to Martin's siblings a right to access a pond and a cabin on the property. It also purported to reserve a right of first refusal to Martin's siblings and their heirs if Martin or his heirs ever desired to sell the property. These facts are not disputed either.

The plaintiff filed this lawsuit in December of 2016. This was a little over a year after Martin sold the property to the Tinsleys.

Plaintiff's complaint describes this background information and seeks relief on four causes of action. First, the plaintiff asks the court to construe the deed from his father to Martin and decree that the deed grants plaintiff the right to use the pond, the cabin, and a right of first refusal. Second, the plaintiff asks the court to set aside the deed from Martin to the Tinsleys based on his claimed right of first refusal. Third, the plaintiff seeks an order quieting title in him pursuant to his claimed right of first refusal. Fourth and finally, the plaintiff seeks an injunction preventing interference with his access to the pond and cabin.

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Defendants believe summary judgment should be entered in their favor on plaintiff's claims because the language in Martin's deed purporting to grant plaintiff a right of first refusal and the right to access the pond and cabin is an invalid attempt to restrict the grant of the land to Martin in fee simple absolute. The Court agrees.

During the hearing all parties acknowledged this issue is an issue for the Court to decide as a matter of law.

There is no dispute that Martin's father granted him the land in fee simple absolute. The 1988 deed says the land was granted to "Robert Martin Youmans, his heirs and assigns." The common law required a grant to a person and his heirs to convey a fee simple estate.

McMichael v. McMichael, 51 S.C. 555, 557, 29 S.E. 403, 403 (1898).

Several cases explain the common law rule that an attempt to deprive the grantor of an incident of ownership is legally ineffective when the land has been granted in fee simple. These

cases include *Hunt v. Forestry Commission*, *County of Abbeville v. Knox, Stylecraft, Inc. v. Thomas*, and *Sanford v. Sanford*. The most recent of these cases puts the rule this way: *Hunt* says:

It is a well established rule of law that where the granting clause of a deed purports to convey title in fee simple, the estate may not be cut down by subsequent words in the same instrument.

358 S.C. 564, 570, 595 S.E.2d 846, 849 (Ct. App. 2004). Defendants cited each of these cases in their memorandum supporting their motion for summary judgment.

Viewing the four corners of the 1988 deed to Martin from his father, the Court finds the language purporting to grant a right of first refusal and the right to access the pond and cabin cannot be read as anything other than an invalid attempt to cut down the fee simple estate.

Dealing first with the right of access, the language is broad and grants access that is virtually unrestricted. If effective, the language would grant plaintiff and his siblings the right to use the pond and cabin at any time and for any duration or time. This is inconsistent with at least one of the rights characterizing fee simple ownership: the right to exclude others. The owner of a fee simple estate has the right to tell others that the land is his land, not their land. A right of access directly conflicts with the language granting Martin the fee simple estate.

The only stated condition on the purported right of access is that Martin's siblings share in the cost of repairing and maintaining the pond and cabin. If this language was operable, this would not be a deed to Martin in fee simple absolute. Instead, it would effectively be a deed of the property to all of Martin's children jointly, defeasible if siblings did not contribute to repairs or maintenance. As stated above, this would be directly contrary to the rule that a grant of an estate in fee simple absolute cannot be limited by subsequent language.

The language purporting to create a right of first refusal fails for the same reason. If effective, this language would deprive Martin of the right to sell the property to anyone, at any time, and at any price. The language would force Martin to offer the property to his siblings at 90% of its fair market value. This would require him to take a 10% loss from what he would receive in an arms-length sale to a third party. There is also no limitation on how fair market value is determined if it is disputed, and there is no specified length of time for Martin's siblings to exercise their alleged right of refusal. As with the right of access, this limitation directly conflicts with the grant of fee simple estate in this property to Martin.

The Court expresses no opinion on the other arguments raised in defendant's motion for summary judgment. The Court has viewed all facts and inferences in the plaintiff's favor because the plaintiff is the non-moving party. Again, the parties agreed at the hearing that this particular question—whether the deed's language impermissibly attempts to restrict the fee simple estate—is a question of law.

This order does not end this case. The ruling that the language in question is invalid necessarily precludes plaintiff from succeeding on his causes of action, however defendants have counterclaims for trespass and nuisance, conversion, and for specific performance of an agreement to divide other property they own jointly with plaintiff. Those counterclaims remain pending.

Judge R. Lawton McIntosh

January ____, 2019

_____, South Carolina



Allendale Common Pleas

Case Caption: William Youmans VS Mark B Tinsley , defendant, et al
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Type: Order/Other

S/R. LAWTON McINTOSH

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