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STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)	
William Hunter Youmans, Plaintiff,	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Case No. 2016-CP-03-00286
vs. Mark B. Tinsley and Diane E. Tinsley, Defendants.	)	**ORDER**

This order follows a Form 4 entered March 28, 2019.

The case is before the Court pursuant to the plaintiff's motion to alter or amend and for reconsideration. The motion concerns two orders granting the defendants' motion for summary judgment; the first order being a Form 4 and the second order being a formal order. The Form 4 was entered in November of 2018. The formal order was entered in January of 2019.

The plaintiff asks the Court to amend those orders and withdraw the grant of summary judgment to the defendants. The Court respectfully declines this request and believes the prior ruling reflects the correct application of the law. As explained in the January 2019 order, summary judgment is appropriate because the plaintiff's claims rely on language that is invalid and ineffective as a matter of law.

A 1988 deed from Calvin Youmans to Martin Youmans granted Martin title in fee simple absolute. The deed's granting and habendum clauses conspicuously include the language signifying fee simple absolute: they explain Calvin passed title to Martin and "his heirs and assigns."

The deed also contained two paragraphs that would diminish or "cut-down" the fee simple estate if they were given legal effect. If the paragraph granting Martin's brothers the right to use

the pond and pond cabin on Martin's land was effective and enforceable, it would necessarily reduce Martin's right to complete ownership of the property. Similarly, if the paragraph requiring Martin or his heirs to first offer the property to Martin's brothers or their heirs was effective and enforceable, it would significantly limit the right a landowner has to sell property to whomever he wishes, for whatever price.

The plaintiff offers several arguments for reconsideration.

First, the plaintiff argues the Court should have acknowledged his history of using the pond and cabin while Martin owned the property and that the Court should have viewed the facts in the plaintiff's favor. This argument does not support reconsideration. The Court does not doubt the plaintiff's prior use of the property, however, the question is whether the deed's language is legally enforceable. Also, the Court did not view the facts in anyone's favor. The question presented was the legal question of whether this language was enforceable.

Second, the plaintiff claims Martin did not receive the estate in fee simple absolute. As noted above, the Court disagrees. Calvin's deed to Martin specifically included language signifying a fee simple absolute estate. There is no reference in the deed to any remainder interest, reversionary interest, life estate, or other interest recognized by law.

Third, the plaintiff points to a 1993 statute and argues the Court applied this statute instead of the common law. Section 27-5-130 appears to modify the common law by creating a presumption that all deeds after 1993 pass title in fee simple absolute. This statute would appear to have no application to Calvin's deed of this property to Martin in 1988. Neither party argued this statute to the Court when arguing summary judgment. The Court determined Martin received fee simple absolute by examining the deed's language. The Court did not apply any statute.

Fourth, the plaintiff points to the Supreme Court's decision in *Stroman v. S.C. Power Co.*

as supporting his argument that this language would not impermissibly cut-down Martin's fee simple estate if given effect. *Stroman* construed certain language in a deed as being indistinguishable from an option contract. That language provided a specified tract of land would be sold to two individuals for a specific price—$4,000—"within a reasonable time" of the land ceasing to be used for the purpose of generating power. 168 S.C. 538, 540, 167 S.E. 844, 845 (1933). The Supreme Court explained this option would be an enforceable agreement if it was executed as a stand-alone contract and that it should be no less enforceable because the parties chose to include it in the deed. *Id.* at 541, 167 S.E. at 845.

These clauses are not like that. The language purporting to require Martin or his heirs to offer the property to his brothers and their heirs is not an option contract. It has an infinite duration, an indefinite price, and there is no explanation of how it can be exercised or deemed satisfied. *Stroman* does not appear to have any relevance to the language purporting to grant Martin's brothers a right to access the pond and cabin. The effect of that language appears to be foreclosed by the cases cited in the Court's order from January of 2019 and by *Shealy v. SCE&G*, 278 S.C. 132, 293 S.E.2d 306 (1982), which the defendants cited in their summary judgment motion.

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The motion for reconsideration is respectfully denied. Any arguments not specifically addressed in this order are denied.

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Judge R. Lawton McIntosh

_____, 2019
_____, South Carolina

Allendale Common Pleas

Case Caption: William Youmans VS Mark B Tinsley , defendant, et al

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