

STATE OF SOUTH CAROLINA
 COUNTY OF ALLENDALE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP-0300286

WILLIAM YOUMANS
 PLAINTIFF(S)

MARK B. TINSLEY, ET AL
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE. ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

MOTION FOR SUMMARY JUDGMENT IS GRANTED. AS A MATTER OF LAW, VIEWED FROM THE FOUR (4) CORNERS OF THE DEED FROM CALVIN YOUMANS TO ROBERT M. YOUMANS DATED DECEMBER 30, 1988 THE ATTEMPTS TO LIMIT THE ESTATE CONVEYED SUBSEQUENT TO THE UNEQUIVOCAL GRANT OF FEE SIMPLE TITLE IS INOPERABLE AS A MATTER OF LAW. MR. HEWITT TO PREPARE A FORMAL ORDER.

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$ RECEIVED
		\$ MAY 17 2019
		\$ SC Court of Appeals
If applicable, describe the property, including tax map information and address, referenced in the order.		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

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THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh
Circuit Court Judge

Appellant Case No. 2019-000736

William Hunter Youmans, APPELLANT

vs.

Mark B. Tinsley and Diane E. Tinsley, RESPONDENTS

EXHIBIT-A

TO AMENDED NOTICE OF APPEAL
PRIOR ORDERS OF THE TRIAL COURT
GRANTING SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

William Hunter Youmans.)
Plaintiff.)

vs.)

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

IN THE COURT OF COMMON PLEAS FOR
THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-03-00286

ORDER

RECEIVED

MAY 17 2019

SC Court of Appeals

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.

**

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

Judge R. Lawton McIntosh

_____, 2019
_____, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF ALLENDALE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP-03-00286

WILLIAM YOUMANS
 PLAINTIFF(S)

MARK B. TINSLEY, ET AL
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

MOTION FOR RECONSIDERATION IS DENIED. MR. HEWITT TO PREPARE A FORMAL ORDER.

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
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_____	2155	_____
Circuit Court Judge	Judge Code	Date

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

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

William Hunter Youmans,)

Case No. 2016-CP-03-00286)

Plaintiff,)

vs.)

ORDER)

Mark B. Tinsley and Diane E. Tinsley,)

RECEIVED)

Defendants.)

MAY 17 2019)

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.

*

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.

**

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