

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 13 2019
SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case NO. 2017-002223

Mark Wilson.....Appellant,

v.

Keith Jayma.....Respondent.

FINAL BRIEF OF APPELLANT

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

W. Keith Martens, Esquire
Hamilton Martens, LLC
P.O. Box 10940
Rock Hill, SC 29731

TABLE OF CONTENTS

Statement of Issues, Analysis and Facts	pages 1-14
I. Sealed Instrument, the "CONTRACT"	pages 1-4
II. Sealed Instrument, "Title to Real Estate"	pages 5-8
III. Sealed Instrument, the "Sun Trust Credit Line Mortgage"	pages 9-10
IV. Sealed Instrument, "Mortgage of Real Property"	page 11
Table of Authorities	page 12
I. Cases	page 12
II. Statutes	page 12
Conclusion	pages 13-14

I. Sealed Instrument, the "CONTRACT"; as admitted in Appellant's Amended Brief pages 1-3.

There are significant issues and errors of law surrounding the "CONTRACT" as admitted into evidence (5) five times by attorney Keith Martens and attorney David Cook.

In his Order Granting Summary Judgement to Respondent, dated September 22, 2017, Judge Hayes erred when he stated on R.p.13, the very last paragraph, very last sentence, "There is no evidence that", continued on R.p.14, "Jayma signed any "written contract secured by a mortgage." The POSITIVE EVIDENCE TO THE CONTRARY of Judge Hayes' order of a "written contract secured by a mortgage" is admitted (5) five times into evidence by attorney Keith Martens and attorney David Cook. (1). First in Appellant's Record on Appeal, Pleadings #5. Amended Answer and Counterclaims, October 5, 2015, attorney Keith Martens admitted into evidence the SECOND COUNTERCLAIM, R. p. 65, BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTRNATIVELY BREACH OF CONTRACT (RESIDENTIAL CONSTRUCTION CONTRACT). R.p.65 #108, "Wilson, as contractor, entered into a residential construction contract with Jayma upon the terms and representations described above." R.p.66 #113, "Wilson's obligations and liability to Jayma on the residential construction contract are secured by the above described mortgage.". The 20-year statute is attested to by Judge Hayes in his "OWN WORDS" R.p.13, last paragraph, "The focus of SC 15-3-520(a) is not a mortgage, but rather a written contract that is secured by a mortgage" and would have a 20-year SC Statute of Limitations. The issues surrounding the CONTRACT would have been litigated at trial but Judge Hayes' order for summary judgement denies the opportunity to have the parties' interests under the CONTRACT to be properly evaluated and determined.

(2). Second, the residential construction contract secured by a mortgage was admitted into evidence by attorney Keith Martens in the SIXTH COUNTERCLAIM, REMOVE CLOUD ON AND CONFIRM QUIET TITLE, R.p.70(137) continued on R.p.71, first paragraph.

(3). Third, the contract secured by a mortgage was admitted into evidence by attorney Keith Martens in the ELEVENTH COUNTERCLAIM, ATTERNATIVELY, ENFORCEMENT OF DEED AS A SECURITY INTEREST, where Respondent requested damages for breach of the residential contract, R.p.75,(C).

(4). Fourth, the written "CONTRACT FOR RESIDENTIAL CONSTRUCTION", was presented into evidence at Appellant's deposition on 7/5/17 as exhibit 4, Sup. R. p. 61 lines 18-25, by attorney Keith Martens. He presented the CONTRACT R.pp.79-81 that he says he "thought" was complete, Sup. R. p.64 lines 23-25 and Sup. R. p.65 line 1. Appellant's signature had been fraudulently removed from the "seal" line R. p. 81. Respondent's signature had also been fraudulently removed from the "seal" line of the CONTRACT R.p.81 that was admitted into evidence as exhibit 4 at Appellant's deposition. Respondent's signature is clearly written and visible on Appellant's copy of the CONTRACT as entered in his Amended Brief of 6/28/18 under I. Sealed Instrument, the "CONTRACT" R. p. 82. That CONTRACT names both Appellant and Respondent on the first page. The word "seal" is written and presented on that CONTRACT three (3) times. R.pp.81-82. Based on legal precedent, the subject CONTRACT is

a “sealed instrument” and this suit to construe the validity thereof should be determined on the merits, SC 15-3-520, SC 15-3-520(a), SC 15-3-520(b). Appellant generated that CONTRACT admitted into evidence at Appellant’s deposition, Sup.R.p.64 lines 18-21 and R.p.79-82. That CONTRACT was for a 4,500 square foot home to be built, admitted into evidence at Appellant’s deposition, Sup.R.p.64 lines 1-10. Appellant has been harmed by the CONTRACT.

Attorney Keith Martens, in an attempt to discredit, trick and confuse Appellant, entered this copy of the CONTRACT as exhibit 4 at Appellant’s deposition. Attorney Martens himself was ambiguous and confused and made questionable statements; there was a genuine dispute of the facts:

- (1) Sup.R.p.62 line 14. “You think I’m missing some pages?”
Sup.R.p.62. “Yes sir.”
- (2) Sup.R.p.63 line 5. “Let’s figure out what we’ve got there first.”
- (3) Sup.R.p.63 line 22. “We’ll get it out of the way and not get confused.”
- (4) Sup.R.p.64 lines 11-12. “We’re not sure what that is.”
- (5) Sup.R.p.64 lines 23-25. “Obviously there are some provisions that are missing in the copy that I made, and I apologize for that.”
- (6) Sup.R.p.64 line 25, Sup.R.p.65 line 1. “I thought I had a complete copy when I copied that.”
- (7) Sup.R.p.65 line 3. “Let’s take a quick break.”
- (8) Sup.R.p.65 lines 5-7. “I understand that what we’ve marked as exhibit 4 is not a complete copy of ‘your contract’ with Mr. Jayma.”

Both Appellant’s and Respondent’s signatures have been removed from the signature line as submitted by attorney Keith Martens, R.p.81; to intentionally injure, defraud and deceive 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.

(5). Fifth, attorney David Cook entered: (1) the CONTRACT, (2) the Mortgage, (3) the Deed and (4) the Note into evidence in a series of arguments in the transcript, Other Documents #13, beginning on R. p.212 lines 17-25. “Your Honor, my main argument in defense of the Statute of Limitations is that—well, I have three arguments.”

“Firstly, your Honor, I would allege that the statute that’s applicable here is the twenty year statute regarding sealed instruments, and that would be 15-3-520 which reads and that within twenty years; an action upon a bond or other contract in writing is secured by the mortgage of real property.” R.p.212 lines 19-24.

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 criminally convince the bank to issue a final official bank check that had the Appellant's name on it.

Respondent Jayma forged Appellant's name, entered into evidence by attorney Keith Martens at Appellant's deposition on 7-15-17; Sup.R.p.98 line 25, Sup.R.p.99 line 7, Sup.R.p.104 lines 1-4, Sup.R.p.120 lines 14-15, and again entered as evidence by attorney Keith Martens on R.p.207 lines 9-25, R.p.208 lines 1-12, of the transcript, and deposited that money in Respondent's own account, another violation of the law. The "Forged Check" was also entered into evidence as exhibit 12 of Appellant's deposition, Other Documents #11 R. pp. 195-197. All a part of the trickery, fraud and harm that Respondent committed against Appellant in violation of the law.

- (2) Respondent's wife, Diana Jayma, was advertising the home for sale as a licensed Real Estate Agent as 8,180 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. (but does not include the total square feet under roof by adding a (3)three car garage to the plan that only had a (2)two car garage) entered into evidence by Attorney Martens as exhibit 15 at Appellant's deposition, Other Documents #15 R. pp. 264-266, R.p.185-186 and R.p.183. Harm of the CONTRACT to include Other Documents;
- (3) # 7 R.p.183. Diana Jayma always had the house listed for sale in the wrong area during construction, Area 10-4 of the Multiple Listing Service.
- (4) #8 R.p.184, The House plan, Waystrode E-3990 only had 3990 heated square feet, hence the title E-3990.
- (5) #9 R.p.185-186, Diana Jayma was advertising the home for sale with 8,180 heated square feet, not 3990 heated square feet, not 4,500 heated square feet and not 5,469 heated square feet.
- (6) #10 R.p.187-194, The first and second cost estimates entered into evidence by attorney Keith Martens as Exhibits 5 and 6, were for 4,500 heated square feet, R.p.244 lines 1-10 of p.64 and not 8,180 heated square feet that Diana Jayma was advertising as a licensed real estate agent.
- (7) 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 CONTRACT price and the Contractor (Appellant) lost his entire 63-acre farm to Respondent Jayma, as the farm was collateralized to complete 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, SC 15-3-520(a). As the written CONTRACT is a "Sealed Instrument", the 20-year statute of limitations is applicable; and Appellant is entitled to have the issues surrounding the "CONTRACT" fully adjudicated. Judge Hayes' order denies the opportunity for the issues to be properly evaluated and determined under SC

15-3-520(a). Attorney Martens exact wording, R.p.65#108, "Wilson, as contractor, entered into a residential contract with Jayma upon the terms and representations described above." R.p.66#113, "Wilson's obligations and liability to Jayma on the residential construction contract are secured by the above described mortgage." Our lawmakers passed this 20-year statute, S.C. 15-3-520(a) to right the wrong from harm and errors of law. Appellant has furnished "COMPELLING FACTUAL EVIDENCE" that there is a "WRITTEN CONTRACT SECURED BY A MORTGAGE", that would have a 20-year South Carolina statute of limitations, CONTRARY to Judge Hayes' order granting summary judgment to Respondent. Therefore, Judge Hayes' order granting summary judgement to Respondent should be reversed by the Court.

II. Sealed Instrument, the “Title to Real Estate”; as admitted in Appellant’s Amended Brief pages 4-5.

There are significant issues and errors of law surrounding the execution of the Title to Real Estate, R.pp.109-111, admitted into evidence in the transcript, Other Documents #13, by attorney Keith Martens R. p.205 lines 24-25 and R. p.206 lines 1-3. The evidence recorded in the transcript that, yes, there was a genuine dispute of the facts, and that in Judge Hayes’ Order there was a “Disputed Tract”, R.p.10, 2nd paragraph, R.p.11 1st 2 paragraphs;

- (1) The legal description was attached after the execution of the instrument by the law firm of Blackmon Huckabee and to this date has never been signed or initialed by Appellant as recorded, in an attempt to deceive Appellant and take his land, entered into evidence by attorney Keith Martens R.p.206 lines 7-12. In his Order, Judge Hayes referred to the deeded property as the “Disputed Tract”. R. p.11, first 2 paragraphs. This terminology is interesting in light of the decision being made on a Motion for Summary Judgement, which Motions are ordinarily denied upon a showing of the existence of a genuine issue of material fact in dispute.
- (2) That there was no witness present; Lula Hardin, who has fraudulently signed the instrument as Witness #1 and was attested to, R.p.110. This was admitted into evidence in the transcript by attorney Keith Martens R. p.206 lines 8-9 and by attorney David Cook R. p.223 lines 24-25 and R. p.224 lines 1-2.
- (3) That there were no attorneys present representing either party, admitted into evidence by attorney Keith Martens R.p.208 lines 12-15.
- (4) That there was absolutely “no consideration” given for the 63-acre farm to Appellant, R.p.109, another error of law admitted into evidence by attorney Keith Martens R.p.208 lines 14-15, and should be most troubling to the Court. The “Title to Real Estate” was neither a gift nor a conveyance for a fair consideration. The purpose of the deed was to allow Respondent to obtain financing in furtherance of the partnership. The “Disputed Tract” was mortgaged and financing to pay partnership expenses was obtained. The mortgage to SunTrust Bank was marked satisfied, leaving the “Disputed Tract” unencumbered, Other Documents #12, R.p.198. It would be fraud for Respondent to continue to maintain unencumbered ownership of Appellant’s property under the circumstances.
- (5) Evidence was recorded in Appellant’s deposition, Other Documents #14, that Respondent was approved for a loan on 25 acres, not the 63 acres that were erroneously conveyed to him, Sup.R.p.115 lines 16-25, Sup.R.p.126 lines 20-25 and Sup.R.p.127 lines 1-3. Judge Hayes, in his order, referred to the deeded property as (the “Disputed Tract”) R.p.10, end of the 2nd paragraph. Motions are ordinarily denied upon a showing of the existence of a genuine issue of material fact in dispute.
- (6) Attorney Martens was also troubled by the legal execution of the deed and the errors made and filed the SIXTH COUNTERCLAIM, R.p.70(136)(137), the SEVENTH COUNTERCLAIM, R.p.71,(144) and the ELEVENTH COUNTERCLAIM, ALTERNATIVELY ENFORCEMENT OF DEED AS A SECURITY INTEREST, R. p. 75,(161).

(7) Judge Hayes' Order Granting Summary Judgement also misses the point and has erred again in Appellant's case. The Title to Real Estate, on which Appellant is the bound party (according to Lyons v. Fidelity Nat'l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct.App. 2015), and it is a sealed instrument (also according to Lyons and the various cases cited therein). Judge Hayes' Order found that Jayma is not the 'bound party' of the deed to the "Disputed Tract". Of course he is not a 'bound party'. He didn't sign the deed. Appellant signed the deed as sole grantor (sole bound party).

The Title to Real Estate in this case mentions "Seal" and "Sealed" three (3) times: "WITNESS our Hand and Seal this 4th day of November 2005"; "Signed, Sealed, and Delivered in the Presence of"; and "Personally appeared before me the undersigned and made oath that (s)he say the within Grantor(s) sign, seal and as their act and deed deliver the written Deed..." R. p. 110. Statutes; S.C. 15-3-520, S.C. 15-3-520(a), S.C.15-3-520(b), S.C.36-2-725 and S.C. 15-3-340 are applicable in Appellant's case.

Based on legal precedent, the subject Title to Real Estate is a "sealed instrument" and this suit to construe the validity thereof should be determined on the merits. Judge Hayes' order denies the opportunity to have the parties' interests under the Title to Real Estate properly evaluated and determined.

Attorney Keith Martens "personally answered" the reason for this lawsuit and entered it as evidence at the Appellant's deposition:

Sup.R.p.102 line 16: "I mean, that's what this lawsuit is about,"

Sup.R.p.102 line 17: "Right?"

Sup.R.p.102 line 18: "What?"

Sup.R.p.102 line 19: "You transferring 63 acres instead of 25."

Sup.R.p.102 line 20: "Yeah."

Attorney David Cook entered: (1) the CONTRACT, (2) the Mortgage, (3) the Deed and (4) the Note into evidence in a series of arguments in the transcript, beginning on R. p.212 lines 17-25. "Your Honor, my main argument in defense of the Statute of Limitations is that—well, I have three arguments."

"Firstly, your Honor, I would allege that the statute that's applicable here is the twenty year statute regarding sealed instruments, and that would be 15-3-520 which reads and that within twenty years; an action upon a bond or other contract in writing is secured by the mortgage of real property."

Secondly, R. p.213 lines 7-12, "Essentially, your Honor, my client's arguing that the mortgage and the deed, and the note, that this case is based on are sealed instruments." South Carolina's 20

year and 10 year statute of limitations are applicable in Appellant's lawsuit, R. p.212 lines 21-25 citing SC 15-3-520 and SC 15-3-520(b). R. p.213 lines 3-23 as prescribed in 36-2-725, R. p.215 lines 19-25, SC Statute 15-3-340 Action by an Individual for Recovery of Real Property, continued on R. p.216 lines 1-15, "And I would argue that this lawsuit is, for one, for the recovery of real property because we're requesting the recovery of the sixty two acres that were deeded out my client would allege improperly.... And under those two statutes, your Honor, my client would argue that this case would well be within the statute of limitations for either the twenty or the ten year statutes."

Attorney David Cook admits these Cases into evidence;

1. Lyons v. Fidelity National Title, 415 S.C. 115 (Ct. App 2015). R.p.213 lines 10-12.
2. Lyons v. Fidelity National Title Insurance Company 2015 WL 7756187 S.C. (Ct. App Dec.2,2015). R.p.213 lines 11-25, R.p.214 lines 1-4.
3. McKinnon verses Summers, R.p.221 lines 20-25, R.p.222 lines 1-4.
4. Lyons Carmichael, R.p.223 lines 13-23.
5. Lyons 320 S.E. 2nd 464, R.p.225 lines 1-16.
6. Treadway 479 S.E. 2nd 849, R.p.225 lines 13-14.
7. South Carolina Department of Social Services V Winyah Nursing Homes 320 S.E.2nd 464, R.p.225 lines 14-15.
8. Carolina Marine Handling, Inc V Lasch 363 S.C. 169, R.p.225 lines 18-19.
9. Suttles V Wood 312 S.E.2nd 574, R.p.225 lines 19-20.

Attorney Cook continues "Finally, your Honor," R. p.216 lines16-25, R. p.217 lines 1-10 and R.p.218 lines 7-25.

Attorney Martens stated, R. p.221 lines 9-19.

Attorney Martens stated, R. p.222 lines 1-6, "an action to set aside a deed for the basis of fraud, and that a shorter, at the time a six-year statute of limitations should apply." All of the above statutes of limitations carry a longer time to file a lawsuit rather than the standard 3 year statute imposed by Judge Hayes.

Attorney David Cook continues, R. p.223 lines 1-25, line 1 "my client", R. p.224 lines 23-25, R. p.225 lines 13-20. Attorney David Cook's argument is continued on the entire R. pp.213-218 of the 8-23-17 transcript. Continued on R. p.223 lines 5-7, "My client deeded out his family land to Mr. Jayma in this agreement with an understanding that the land would be deeded back to him..." R. p.223 line 10, "There is a mortgage involved that has a seal and the deed as well..."

The fact that attorney Martens states and admits into evidence in the transcript R. p.208 lines 12-16, that Respondent even told Appellant that he had been snookered too; R. p.208 lines 15-16 “and you said you were snickered too” about the entire 63 acre tract that was erroneously transferred rather than 25 acres and “with absolutely no money changing hands”, R. p.208 lines 6-7, R.p.109, proves there were genuine issues of material fact surrounding the Title to Real Estate.

The reason for this lawsuit was also admitted by attorney David Cook in the transcript, R. p.223 lines 4-12. The Title to Real Estate which erroneously conveyed the 62-acre farm is a “Sealed Instrument” which is subject to South Carolina’s 20-year statute of limitations for actions upon sealed instruments; and Appellant is entitled to have the issues surrounding the Title to Real Estate fully adjudicated. The issues and errors of law surrounding this land transfer that was executed and recorded by a South Carolina attorney, Blackmon Huckabee, should be most troubling to the Court. Judge Hayes erred in his order for summary judgement which denies the opportunity to have Appellant’s interest under the Title to Real Estate to be properly evaluated and determined. Therefore, Judge Hayes’ order for summary judgement should be reversed by the Court.

III. Sealed Instrument, The “SunTrust Credit Line Mortgage”, as admitted in Appellant’s Amended Brief, page 6

There are significant issues surrounding the “SunTrust Credit Line Mortgage”, R.pp.141-148, admitted into evidence at Appellant’s deposition.

Respondent Jayma’s “SEAL” is affixed to the June 7, 2006 instrument, the “SunTrust Credit Line Mortgage”, R.p.146, where 38 acres of the 63-acre farm were erroneously conveyed to Respondent Jayma under “SEAL”, which created a sealed instrument, R.p.146-147. The SC 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”, R.p.10 2nd paragraph, R.p.11 1st and 2nd paragraphs. 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 at Appellant’s deposition by attorney Keith Martens on 7-5-2017 and was discussed at length between attorney Martens and 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”. Sup.R.p.132 lines 13-18. Judge Hayes asked for clarification for the dollar amount of this mortgage at the hearing, R. p.206, lines 17-18 of the transcript. Appellant contended during his deposition that SunTrust Bank had forgiven and therefor “Satisfied” the \$194,000 mortgage, Sup.R.p.131 lines 14, Sup.R.p.132 lines 7-10, Sup.R.p.133 lines 5-6, 40 days after Appellant filed his lawsuit which included SunTrust Bank on April 5, 2012, to be dismissed from Appellant’s Lawsuit and they were dismissed, on May 15, 2012, by Appellant’s Attorney David Cook. See copy of that “Satisfaction of Mortgage”, Other Documents #12, R.p.198. This was also admitted into evidence by attorney David Cook on R.p.218 lines 16-25, and R.p.219 lines 1-2 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”, R.p.220 lines 2-3 as evidenced in Exhibit B of the transcript. Again, attorney Martens claimed that Respondent Jayma had acquired a “new” equity line that did not use any part of the “Disputed Tract”. At Appellant’s deposition Attorney Keith Martens jumped up and out of his seat and exclaimed loudly, “SO, YOU’RE CALLING ME A LIAR?” Sup.R.p.133 Line 3. Respondent Jayma’s SEAL is affixed to this SunTrust Credit Line Mortgage, R.p.146 and was admitted into evidence during Appellant’s deposition on 7-5-2017 and 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).

Disputes about the SunTrust Mortgage were entered into evidence at Appellant’s deposition on 7-5-17; Attorney Martens made questionable statements. There was a dispute of the facts:

- (1) Attorney Keith Martens asks, “Do you know how much “you” owed on that \$194,000 loan?” Sup.R.p.131 lines 12-13.
“It’s been paid in full.” Sup.R.p.131 line 14.
- (2) Appellant testifies that SunTrust Bank, “they satisfied the mortgage in full”, Sup.R.p.132 lines 7-10.
- (3) Rather than asking questions of Appellant, attorney Martens took it upon himself to admit his own testimony into the record during Appellant’s deposition, disputing how the SunTrust credit line mortgage was satisfied. Sup.R.p.132 lines 11-25.
- (4) Attorney Martens wanted Appellant to “assume” this is true. Sup.R.p.132 lines 13-14.
- (5) Attorney Martens continues, “I want you to assume that it is true because that’s what I’m telling you is true.” Sup.R.p.132 lines 14-15.
- (6) Attorney Martens testifies to Appellant, “That the only reason that loan has been paid off on that 63 acres is because Mr. Jayma now has \$194,000 credit line against his personal home.” Sup.R.p.132 lines 15-18.
- (7) Then Attorney Martens jumped up and out of his seat exclaiming, “So you’re calling me a liar?” Sup.R.p.133 line 3.
- (8) Appellant says, “I’m saying SunTrust satisfied the mortgage because of my lawsuit, not because Jayma got an equity line.” Sup.R.p.133 lines 19-23.
- (9) Appellant says, “He could borrow whatever he wanted to on his home.” Sup.R.p.133 lines 5-6. “That doesn’t have anything to do with the \$194,000 and my 63 acres.” Sup.R.p.133 lines 7-8.

The SunTrust Credit Line Mortgage in this case mentions “Seal” and “sealed” five (5) times: (1) this Mortgage to be signed, sealed and delivered; (2) (3) Signed, sealed, and delivered in the presence of: twice; (4) Keith D. Jayma, (Seal); (5) Diana Jayma (Seal). R.p.146-147. Based upon legal precedent, the subject SunTrust Credit Line Mortgage is a “sealed instrument” and this suit to construe the validity thereof should be determined on the merits. Judge Hayes Order denies the opportunity to have Appellant’s interest properly evaluated and determined.

As the SunTrust Credit Line Mortgage is a “sealed instrument”, the 20-year statute of limitations is applicable; and Appellant is entitled to have the issues surrounding the SunTrust Credit Line Mortgage fully adjudicated. Therefore, Judge Hayes’ order for summary judgement granted to Respondent should be reversed.

IV. Sealed Instrument, “Mortgage of Real Property”; as admitted in Appellant’s Amended Brief page 7.

The April 18, 2005 document “Mortgage of Real Property” was a sealed instrument between Appellant, Respondent Jayma and Defendant Streeter. This “Sealed Instrument” was admitted into evidence as Exhibit 3 by attorney Keith Martens, R.pp.159-164 at Appellant’s deposition on 7-5-2017. The evidence proves that Appellant did not identify the property, I.E. the “Disputed Tract,” R.p.10 2nd.paragraph as Appellant did not sign or initial the description page of that “sealed document”, Sup.R.p.43 lines 9-10, Sup.R.p.44 lines 9-10 and R.p.164 as executed and attested by Attorney Blackmon Huckabee; creating errors of law. This document mentions signed, sealed, sign and seal four (4) times; IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor.... That (s)he saw the within named Frederick Mark Wilson sign, seal and as their act and deed, deliver the within- written Mortgage of Real Property; R. p. 163.

- (1) Appellant did not sign or initial the description page of Exhibit 3, the “Mortgage of Real Property”; Sup.R.p.43 lines 5-10, line 9 “I was just looking at the description page”, line 10 “I don’t see my signature on it.” Sup.R.p.44 lines 9-10, Attorney Martens said, “And then the property description does not have your initials or your signature on it.” Appellant, Sup.R.p.44 line 11, “Right.”
- (2) Appellant had no legal representation at the signing of the Mortgage of Real Property, Sup.R.p.47 lines 8-10.
- (3) Respondent has been paid in full as admitted into evidence at Appellant’s deposition; Sup.R.p.34 lines 23-25, Sup.R.p.35 lines 1-2, “You repaid the entire amount of that loan?” “Yes, sir.” Sup.R.p.37 lines 2-12, Sup.R.p.38 lines 24-25, Sup.R.p.39 lines 1-10, Sup.R.p.41 lines 1-4, Sup.R.p.43 lines 5-10.
- (4) Sup.R.p.53 lines 10-21, line 12, “In lieu of any interest on the promissory note, I agreed to work on his building. I did the work on his wife’s real estate office.”
- (5) Respondent was a mortgage lender, DBA International Mortgage Services. Appellant contends that this loan may not have met federal guidelines for making a loan.

Judge Hayes erred when he granted summary judgement to Respondent. Appellant did not sign or 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 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.) The Mortgage of Real Property, on which Appellant (as signor) is the bound party, according to Lyons v. Fidelity Nat’l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct.App.2015), and it is a sealed instrument (also according to Lyons and the various cases cited therein). Based upon legal precedent, the subject “Mortgage of Real Property” is a sealed instrument and this suit to construe the validity thereof should be determined on the merits. Therefore, Judge Hayes’ order granting summary judgement to Respondent should be reversed by the Court.

TABLE OF AUTHORITIES

I. Cases

1. Lyons V Fidelity National Title Insurance Company 2015 WL 7756187 S.C. Ct. App Dec 2, 2015), R.p.213 lines 11-25, R.p.214 lines 1-4.
2. Lyons 320 S.E. 2nd 464, R.p.225 lines 1-16.
3. Carolina Marine Handling, Inc V Lasch 363 SC 169, R.p.225 lines 18-19.
4. Suttles V Wood 312 S.E. 2nd 574, R.p.225 lines 19-20.
5. Treadway 479 S.E.2nd 849, R.p.225 lines 13-14.
6. South Carolina Department of Social Services V Winyah Nursing Homes 320 S.E. 2nd 464, R.p.225 lines 14-15.
7. Lyons Carmichael, R.p.223 lines 13-23.
8. Lyons V. Fidelity National Title, 415 S.C. 115 (Ct. App 2015). R.p.213 lines 10-12.
9. McKinnon verses Summers, R.p.221 lines 20-25, R.p.222 lines 1-4.

II. Statutes

- (1). SC Section 5-3-520, R.p.212 lines 19-25, R.p.213 lines 7-12, R.p.214 lines 1-4.
- (2). SC Section 5-3-520(a), R.p.13 very last paragraph, R.p.212 lines 19-24, R.p.214 lines 1-4, R.p.214 lines 21-25.
- (3). SC Section 5-3-520(b), R.p.212 lines 21-25, R.p.213 lines 1-25, R.p.214 lines 1-4, R.p.214 lines 16-25, R.p.215 lines 1-20.
- (4). SC Section 15-3-340, R.p.215 lines 24-25, R.p.216 lines 1-15, R.p.214 lines, R.p.215 lines 23-25.
- (5). SC Section 36-2-725, R.p.213 lines 3-23, R.p.214 lines 1-4.

CONCLUSION

Judge Hayes erred when he said, "There is no evidence that Jayma signed any written contract secured by a mortgage." R.p.13, very last paragraph, very last sentence, R.p.14, 1st sentence.

Judge Hayes was correct when he stated that "The focus of SC 15-3-520(a) is not a mortgage, but rather a written contract that is secured by a mortgage," and that document would have a 20-year statute of limitations under South Carolina law Section 15-3-520(a). R.p.13, last paragraph, 2nd sentence.

The POSITIVE EVIDENCE of the "WRITTEN CONTRACT SECURED BY A MORTGAGE" is entered as Exhibit 4, R.pp.79-82 and in Respondent's SECOND COUNTERCLAIM R.p.65, SIXTH COUNTERCLAIM, R.p.70(137), R.p.71, 1st paragraph, ELEVENTH COUNTERCLAIM R.p.75,(C) and by attorney David Cook, R.p.212 lines 17-25.

Appellant was harmed by the issues and errors of law surrounding the CONTRACT. Most notably that Appellant lost his entire 63-acre farm to Respondent that was collateralized to complete Respondent's "2nd home as financed" and that the home size was increased by more than 50% from the architectural house plan.

The word "seal" is written and presented on that CONTRACT (3) three times. R.p.81-82. Based on legal precedent, the subject CONTRACT is a sealed instrument and South Carolina's 20-year statute of limitations upon a sealed instrument is applicable, SC 15-3-520(a).

The CRITICAL, FACTUAL EVIDENCE that there were issues and errors of law surrounding the Title to Real Estate, including that even to this day; (1). There is no signature or initial on the description page of the land transfer of Appellant's 62.69 acres unencumbered to Respondent, R.p.206 lines 7-12. R.p.111.

(2). There was no consideration given for the property, R.p.208 lines 14-15. The Title to Real Estate was neither a gift nor a conveyance for a fair consideration. R.p.109.

(3). That Judge Hayes was troubled by this issue and in his Order, he referred to the deeded property as the "DISPUTED TRACT", R.p.10 2nd paragraph, R.p.11, 1st 2 paragraphs. This terminology is interesting in light of the decision being made on a Motion for Summary Judgment, which Motions are ordinarily denied upon a showing of the existence of a genuine issue of material fact in dispute.

(4). That attorney Keith Martens was troubled by the laws surrounding the land transfer and filed Respondent's SIXTH COUNTERCLAIM, REMOVE CLOUD AND CONFIRM OR QUITE TITLE, R.p.70(136), (137), the SEVENTH COUNTERCLAIM, CONSTRUCTIVE TRUST, R.p.71(144) and the ELEVENTH COUNTERCLAIM, ALTERNATIVELY, ENFORCEMENT OF DEED AS A SECURITY INTEREST, R.p.75(161).

(5). There was no witness or attorney present when Appellant was presented with the Deed at Honda Cars of Rock Hill transferring 62.69 acres to Respondent. R.p.206 lines 8-9, R.p.223 lines 24-25, R.p.224 lines 1-2, R.p.208 lines 12-15. R.p.110.

The issues and errors of law surrounding the Title to Real Estate, that was unlawfully executed, filed and recorded by attorney Blackmon Huckabee, R.pp.109-111, should be most troubling to the Court. Respondent's Initial Brief and the Order Granting Summary Judgement, both of which were obviously prepared by attorney Martens, miss the point and Judge Hayes has erred again in HIS ORDER granting Summary Judgement to Respondent Jayma in Appellant's case. Judge Hayes' order found that Respondent Jayma is not the "bound party" of the deed to the "Disputed Tract", R. p. 13, end of the second paragraph, of course he is not a "bound party". He didn't sign the deed, Appellant signed the deed as sole grantor/sole bound party. The Title to Real Estate, on which Appellant (as signor) is the bound party (according to Lyons v. Fidelity Nat'l Title Ins. Co., 415 S.C. 115, S.E.2d 126 (Ct.App. 2015, and it is a sealed instrument (also according to Lyons and the various cases cited therein). One of those cases, Treadway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct.App. 1996), makes it clear that a "non-sealed" instrument may be shown to be intended to be a "sealed instrument." In Treadway, the Court concluded that the language included in the agreement "manifested the parties' intent to create a sealed instrument." That language was the standard attestation clause; "In WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals" along with the following standard language: "SIGNED SEALED AND DELIVERED IN THE PRESENCE OF," ("Seals or Sealed" mentioned twice).

The said Title to Real Estate in this case mentions "seal" and "sealed" (3) three times. R.p.110. Based upon legal precedent, the subject Title to Real Estate is a "sealed instrument" and is subject to South Carolina's 20-year statute of limitations, SC 15-3-520, SC 15-3-520(a), SC 15-3-520(b). This suit to construe the validity thereof should be determined on the merits. Judge Hayes' Order denies the opportunity to have the parties' interests under the Title to Real Estate and the CONTRACT properly evaluated and determined. A sleazy crooked person, Respondent Jayma, has swindled Appellant out of his entire 63-ACRE South Carolina farm over the construction of ONE house. Our lawmakers passed South Carolina's 20 and 10-year statutes of limitations to ensure that land transfers, that have been executed and recorded unlawfully, can be corrected and made right and to correct the harm from a "written contract secured by a mortgage". These 20 and 10-year statutes, that this lawsuit is based on, stated by Judge Hayes in his order, R. p. 13 first paragraph, "Wilson argues that his claims are subject either to the twenty-year statute of limitations of SC 15-3-520 (actions upon a sealed instrument bond or other contract in writing secured by a mortgage of real property) or to the ten-year statute of limitations set forth in SC 15-3-340 (action by an individual for recovery of real property," were argued feverishly by attorney David Cook, R.p.214 lines 15-25, R.p.215 lines 1-25, R.p.216 lines 1-15. Appellant is entitled to have the issues surrounding the "sealed instruments", I. The CONTRACT, II. The Title of Real Estate, III. The SunTrust Credit Line Mortgage and IV. The Mortgage of Real Property fully adjudicated. Therefore, based on the factual evidence, legal precedent, South Carolina's 20-year and 10-year statute of limitations and errors of law, Judge Hayes' Order granting summary judgement to Respondent should be reversed by the Court.