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

RECEIVED
AUG 02 2019
SC Court of Appeals

Case No. 2016-CP-03-00286
Appellant Case No.: 2019-000736

William Hunter Youmans, ...APPELLANT

vs.

Mark B. Tinsley and Diane E. Tinsley, ...RESPONDENTS

INITIAL BRIEF OF APPELLANT

Appellant here files its Initial Brief and would respectfully show the Orders and legal rulings by the trial judge were errors of law controlled by abuse of discretion, and were without evidentiary support. Appellant respectfully avers before the Court of Appeals that Summary Judgment was granted in error where the trial court misapplied common law and failed to view the law and all facts, evidence, and inferences most favorably to the Plaintiff Hunter Youmans.

Respectfully submitted,

HALFORD & NIEMIEC, L.L.P.

J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
Attorneys for Appellant Hunter Youmans

July 31, 2019

INDEX

TABLE OF AUTHORITIES

QUESTIONS PRESENTED

I. WAS IT ABUSE OF DISCRETION BY THE TRIAL JUDGE TO GRANT SUMMARY JUDGMENT UNDER RULING OF LAW WHERE THERE EXISTED PENDING MOTIONS ON DISCOVERY NONCOMPLIANCE?

II. DID THE COURT ERROR IN APPLYING COMMON LAW BY RETROACTIVELY APPLICATION OF POST-1993 PRESUMPTIONS UNDER S.C. CODE ANN. 27-5-130(C) IN RULING AS LAW THAT THE 1988 DEED CONVEYED FEE SIMPLE ESTATE TO MARTIN?

III. IS THE TRIAL COURT'S RULING AT LAW ERROR AND ABUSE OF DISCRETION WHERE THE COURT FAILED TO VIEW ALL FACTS AND INFERENCES MOST FAVORABLE TO PLAINTIFF HUNTER YOUMANS?

IV. WAS IT ABUSE OF DISCRETION LEADING AND ERROR FOR THE COURT TO RULE WITHOUT SUPPORTING EVIDENCE OF REVOCATION, WAIVER OR RELEASE?

STATEMENT OF THE CASE

This case arises out of a real estate transaction in Allendale County that closed in September of 2015. The transaction involved the sale of three (3) tracts of land from Martin Youmans ("Martin") to defendants Mark Tinsley and Diane Tinsley ("Tinsley"). Martin is one of four Youmans sons, and the Plaintiff's brother. These facts are undisputed.

Martin received title to two (2) of the aforementioned tracts of property directly from his father Causey Youmans ("Causey") in 1988. Tinsley acquired three (3) tracts from Martin in a package-deal closing on September 22, 2015. The deal is processed through offices of attorney Walter H. Sanders, Jr. ("Sanders") of Fairfax, South Carolina. Sanders is the author and attorney creating all legal instruments leading up to the Tinsley acquisition. Noteworthy is that attorney Sanders is likewise author and prepared the underlying December 30, 1988 deed from father Causey to son Martin in the chain of title. Plaintiff Hunter Youmans ("Hunter") filed suit in Allendale County December 28, 2016. The causes of action in the complaint were mainly equitable, alleging for (1) Declaratory Judgment, (2) an Action to Set Aside Deed, (3) an Action to Compel Right of Purchase and Quiet Title, and (4) an action for temporary and permanent injunctive relief involving being locked out of the pond house on Tract-A by Tinsley.

The record evidences that no written contract existed prior to Martin executing deeds to Tinsley. The 2015 deed is executed under general warranty language prepared by Sanders. At issue is a pond house property that had been in the Youmans family for decades. (Tract-A in complaint). The other property is a 38.389 acre tract involving farm land, held jointly by Martin and Hunter until Tinsley's acquisition. (Tract-B in complaint). The last property was the former residence of Martin Youmans which lies adjacent to the two aforementioned tracts.

The complaint alleged four (4) causes of action, mainly equitable. The Answer and Third Party Complaint of defendants likewise sought equitable relief by Specific Performance regarding the 38.389 farm tract described above. Third party complaint as against Appellant counsel Halford is later dismissed, and by Amended Answer and Counterclaims Defendants sought specific performance and division of the 39.389 acre tract that was once jointly-held by the brothers. Effective September 22, 2015, the land has become jointly titled in the name of Hunter Youmans and the Tinsley defendants. (R. p. ___ / Amended Answer and CC). Plaintiff and Defendants are now joint tenants. The record is devoid of any written agreement as among joint tenants before – or after – the Tinsley package-deal.

Discovery in the case evidences that Mark Tinsley does not appear for settlement; Tinsley's spouse delivers a $420,121.91 personal check to settlement attorney Walter Sanders, Jr. on the date of closing. (R. p. ___). The settlement statement is never fully executed by Tinsley. It does not bear the signature of either defendant. (R. p. ___ 9/22/15 Settlement Statement). After executing the deeds, Sanders performed all disbursements and recording of legal instruments of public record in Allendale County. There is one

omission: An executed Release by Hunter Youmans. It is never obtained. The settlement and public recordings went forward, nonetheless, on 9/22/2015 and 9/25/2015, respectively. (R. p. ___ at ____ - deed; settlement statement).

Noteworthy is the Amended Answer by Defendants asserted equitable counterclaims for Specific Performance of an alleged agreement to sever and divide the 39.389 acre farm tract described above. The court never requires defendants to produce any evidence of agreement, offers or contract. The 38.389 acre tract previously sold from another Youmans brother, Stephen Youmans, ("Stephen") to brothers Martin and Hunter. It was subject to the same need for Release instrument to be acquired from brother Kevin Youmans. (R.p. ___ - disc. Produced by Sanders). This 39.389 acre tract and the 67.012 acre pond house property are both part of the impending package-deal. At no time did Hunter Youmans execute a Release of his interest on the pond house property. No signed release was obtained by the settlement attorney pertaining to the pond house and 67.012 acres. This property lies adjacent to the tract of land Hunter's residential home is situated upon. The pond house is the child hood home of the Youmans' late father Causey, moved to the pond by the brothers. (R. p. ___ affidavit Stephen Youmans; Affidavit Kevin Youmans on file with court record.)

Tinsley simultaneously acquired no less than three (3) tracts of land, all formerly held by the Youmans' father, Causey. The package deal is inclusive of the aforementioned 67.012 acre pond and pond house described in the 1988 deed from Causey to Martin. Long in contention before the trial judge was the language, estate and rights conveyed by this 1988 deed in the chain of title. The Youmans' father Causey conveyed the property to son Martin, reserving rights to three of his other sons within the

deed. The court later rules taking exception to all page two paragraphs of this deed in ascertaining grantor intent. The court narrows its focus to the granting and habendum clauses of the deed, strictly. The later paragraphs evidencing grantor intent are legally ruled to be either an invalid restraint on alienation, or impermissible first right of refusal that would diminish or cut down the estate to Martin. The deed describes the right as opportunity to purchase, however, never a first right of refusal. The language and agreement accepted by Martin is under the following language :

> The Grantee, Robert Martin Youmans, his heirs and assigns, by the acceptance of this deed agrees to the condition that in the event the Grantee, Robert Martin Youmans, his heirs and assigns desire to sell or otherwise convey the property herein conveyed that he will first offer the property to Stephen Causey Youmans, William Hunter Youmans and George Kevin Youmans, their heirs and assigns at Ninety (90%) Percent of the fair market value of the property and give Stephen Youmans, William Hunter Youmans, and George Kevin Youmans, their heirs and assigns an opportunity to purchase the said property for the price herein stated.

Plaintiff argued he held valid vested rights under this deed, including right to purchase acquired through use over the years since the 1988 deed to Martin. Defendants argued that the language of the deed was ineffective and inoperable as a matter of law, under several cases, all adopted by the trial judge *carte blanche* under leading authority of Stylcraft, Inc. v. Thomas, 250 S.C. 495, 159 S.E.2d 47 (1968). (R. p. __ 4/8/2019 Order Para. (2), and 1/2/2019 Order). The court specifically found that Martin gained ownership of this land from his father, and the deed purported to reserve to Martin's siblings a right to access a pond and cabin on the property. As construed by the trial judge, it also purported to reserve a *right of first refusal* (sic) to Martin's siblings and their heirs if Martin or his heirs ever desired to sell the property. (R.p. __ 1/8/19 Order ¶6

lines 2-4). The deed contained right of purchase option upon first being offered, not first right of refusal and restraint. The court failed to recognize purchase option created within the deed finding "*There is no reference in the deed to any remainder interest, reversionary interest, life estate, or other interest recognized by law.*" (R. p. ___ 4/8/2019 Order p. 2 ¶4 lines 3-4). The court refused to consider as applicable Stroman, et al v. South Carolina Power Co. et al, 168 S.C. 538, 167 S.E.2d 844 (1933), instead adopting in full "all" defense-cited cases under the leading authority of Stylecraft, Inc. v. Thomas, 250 S.C. 495, 159 S.E.2d 47 (1968). Plaintiff counsel had been permitted post-argument to email the court a case stating an option (not first right of refusal) would not be an invalid restraint and that limited fee simple could be legally valid and permissible under law. Stroman, supra. Martin's agreement with father Causey in the 1988 deed should be no less enforceable in a deed for $5.00 love and affection, were it legally enforceable if executed as a stand-alone contract. (R. p. ___ 10/10/18 Halford to McIntosh Letter after 10/8 hearing). As evidenced by subsequent Rule 59(e) arguments to reconsider, alter or amend – the court has either over-looked or chooses to ignore the agreement and accepted by Martin. "*What we are alleging is your honor has inadvertently but ..retroactively applied the current state of common law to a 1988 deed . . . my client is one of four brothers that got vested with something, in other words, by agreement .*" R.p. __3/27/19 Trans 6 at 1-17). The Court is construing the 1988 deed by inference to the 2015 deed language, ignoring intent of the Grantor, acceptance, and agreement:

The Court: "*There's an agreement*? In all candor, Mr. Halford, I do not recall *any agreement. The agreement between the Tinsleys and the grantor in this case*" ? The

court agreed that in order for Martin had to have fee simple absolute in order to convey it to Tinsley, as argued by plaintiff counsel:

> Halford : "The point is, Martin had to have fee simple absolute in order to convey it - -
>
> The Court: *Right.*

The court *forecloses* any other conceivable construction, finding Stroman irrelevant after asking that the Stroman precedent be emailed to the court. The trial judge opines merely as to *usage* vs. properly analyzing plaintiff option to purchase under the deed. It does so under common law abrogated by statute in 1993. The court cites "each" of the cases cited under January 8, 2019 Order, lead by Shealy v. SCE&G. Shealy is a 1982 Supreme Court case construing deed language prior to statutory abrogation of common law in 1993. S.C. Code Ann. §27-5-130(c). Hunt v. Forestry Commission, County of Abbeville v. Knox, Stylecraft, Inc. v. Thomas and Sanford v. Sandford are all adopted under the principal that fee simple estate may not be cut down by subsequent words in the same instrument. "*Defendants cite each of these cases in their memorandum...*" (R.p. ___ at ____ 3/25/2019 Order).

The question before the Court of Appeals is whether the trial judge correctly, or incorrectly, determined the estate from father Causey to son Martin as simple absolute estate, hence empowering Martin to convey fee simple absolute to Tinsley. *Or, whether Martin get something less than fee simple estate necessitating Release instruments by all other Youmans brothers*? Twenty Seven (27) years of time had elapsed between the two respective deeds, factually implicating use and access by Plaintiff over the years. This is ignored by the trial judge. The court accepts, yet refuses to consider in light most favorably to Plaintiff under Rule 56, documentary evidence [Exhibit-4] by settlement

attorney Sanders. In the Exhibit Sanders, the person who created the option, described the right to purchase (sic) as *valid.* (R.p. ___ -10/18/2018 Transr. 36 at 5-11). As argued by Plaintiff counsel when this Exhibit is passed up to the bench: "*That conveyance language that you're referring to that is invalid, well, the closing attorney certainly didn't think so.* As to Exhibit-4 then before the court, counsel advised the court "*It says, you have the option to purchase the property in the event Martin desires to sell or otherwise convey. Martin desires to sell the property. If you want to retain your right to purchase it, please notify me.*" (R. p. __ 10/8/2018 Transc. P. 36, lines 5-11). The court responds "*And let me tell you this, I didn't do real estate. I did litigation. I had two partners who did nothing but real estate. And I have watched them over the years ... if they think there's any blemish, they turn over every stone that they can to make sure there's not a problem down the line, because with real estate, as we all know, if there is, it doesn't ever go away.* (sic). Id. At 15-24.). Under Rule 56(c) SCRCP arguments, the court rules at law not implicating facts of voluntary waiver or release. This is precisely what is now occurring by court order. The blemish of un-executed Release by Hunter Youmans is about to be resolved by court order. It will never be required, leaving an important stone un-disturbed, ignored, and not turned over. Ultimately *foreclosed* under the trial judge's adopting in full all "the cases" cited by Order of January 2019 and under Shealy v. SCE&G, 278 S.C. 132, 293 S.E.2d 306 (1982). As distinguished from Shealy, the deed language never restricted Martin Youmans from any incident of ownership, Martin accepted the deed and the granting intent of his father, Causey. Appellant respectfully asserts abuse of discretion and legal error where the trial court did not do so. In rejecting Stroman, the court opines "These clauses are not like that. The language....is

not an *option contract* (sic)". Yet the court in earlier hearings recognized possibility of limiting agreement in the 1988 deed. In earlier court hearings the court states "if you want to turn in a case that says that my idea of construction is wrong, in other words, it is factual based as opposed to a matter of law based on the four corners of this *contract* (sic), I'll be glad to hear that too." (R.p. __ at __ p. 39 17-22 – 10/8/18 Transcript). The Stroman decision is e-mailed to the court. (R.p. __ Halford Corr. To McIntosh / Hewitt).

The record is devoid of any evidence that Martin (not Tinsley) ever imposed exclusivity as against any Youmans brother, including Hunter Youmans. Absolutely none of the deed or release instruments in this transaction are prepared by defendant Tinsley. (R. p. __). All instruments affecting title are prepared by attorney Sanders. All of said instruments are recorded of public record in Allendale County by Sanders. (R. p. __ - recordings). Sanders likewise prepared a proposed Release sent to Hunter's then-attorney William H. Short, Jr. Short advises Sanders and Tinsely, Hunter does not agree to the sale. Hunter never executes the Release. The purported "settlement" goes forward nonetheless.

It is undisputed that at some undetermined date and time in year 2015 Martin desired to sell. It is undisputed that Martin wished to sell to attorney Tinsley and that Tinsley wished to purchase from Plaintiff's estranged brother. Yet, there are no written offers and no written contract evidencing when, precisely, Martin decided to contract or convey equitable interests. Tinsley takes title under purported General Warranty language prepared by Sanders. Again, noteworthy is that Sanders prepared and executed the prior December 30, 1988 deed from father Causey to son Martin. It expressly identifies Causey's other sons. Namely, Hunter Youmans, Stephen Youmans, and Kevin Youmans.

The deed language cites privileges, usage rights, and option to purchase. The court misconstrues this in refusing to consider Stroman. "*Stroman* appears not to have any relevance (sic) to the language purporting to grant Martin's brothers *a right to access* (sic) the pond and cabin." (Rp. P. __ 4/8/2019 Order p. 3 Para. 2 lines 4-5). The court ignores vesting of rights under the *option to purchase* described by the deed over 27 years access and use by Plaintiff. Again, the record is devoid of written offers or written contracts, save only a text message. The text message exchange between Tinsley and Hunter is : "he (Martin) agreed to take it"; the ominous reply by Hunter states: "K. ***Better get it in writing*** (sic)". (R.p. __ at ___).

All Youmans brothers were expressly identified in the deed together with right to purchase option should Martin or his heirs ever decide to *sell* or *otherwise convey*. The court misconstrues this as a "*first right of refusal*" and characterizes it as inoperable language in ruling at law. (R. p. ___ - Order). Over Twenty Seven (27) years of property use will elapse before the September 22, 2015 Tinsley deed. Despite two (2) successive, unresolved motions to compel, discovery in the case is devoid of any attempt by Martin to exclude or revoke rights of the other Youmans brothers identified in the deed. Plaintiff argued factually vesting of rights before the court on October 8, 2018 and, subsequently, on Rule 59(e) motion argument in Greenwood, S.C. March 27, 2019. However, if improperly viewed as a restraint in alienation and first right of refusal, the language of the 1988 deed accepted by Martin is meaningless. The intent of the grantor is ignored under ruling of law predicated on South Carolina common law.

The September 22, 2015 settlement and subsequent public recordings in Allendale County occurred without any executed Release by Hunter Youmans, specifically. (R. p.

__). This fact is uncontested. Defensive pleadings cite improper reliance on the Rule Against Perpetuities and alleged Waiver. (R. p. __ Answer / CC / Third Party Complaint). Tinsley testifies there is no underlying written contract before the package-deal with Martin Youmans. In one (1) simultaneous settlement Tinsley acquired the three (3) tracts of land, seeking elimination of the rights and privileges of other Youmans brothers. Thus, clearing the way for package-deal of elimination of language in the chain of title binding Martin, his successors and/or assigns; including Tinsley.

One of the tracts in the "package deal" is the 39 acre farm tract jointly held in year 2015 by then-quarrelling brothers Martin and Hunter. (R. p. ___). Another of is a 67.012 acres pond and pond house described within the 1988 deed long argued before the trial court. (R. p. ___). There is no agreement of record as between joint tenants before, or after, Tinsley's acquisition. The 1988 deed described in detail Option to Purchase of the three (3) Youmans brothers if the contingency (decision to sell or otherwise convey) ever occurred. Factual development of the vesting of rights of Hunter Youmans were foreclosed by the court in favor of one party over the other. This occurs under strict analogy to inheritance fee simple language "heirs and assigns" in isolation (R.p. __ 4/8/19 order); Tinsley as purchaser in 2015 advised then- legal counsel for Hunter William H. Short "*we are moving forward*". (R. p. ___). At no time does Tinsley or settlement attorney Walter H. Sanders, Jr. notify Hunter's counsel of the exact date and time for settlement. (R. p. ___). At no time do they procure executed Release by Hunter Youmans prior to closing. The need for speed and stealth are patent; both are advised by attorney William H. Short, Jr. that Hunter does not agree to the impending package-deal

sale involving the pond house acreage and 39.389 acres. (R. p. ___). The 39.389 acres was, until 9/22/2015 held jointly by brothers Martin and Hunter.

The 1988 deed from Causey (father) to Martin was "*for five dollars, love and affection father to son*". It is a gift, not an arm's length transaction. The deed purported to reserve to Martin's Siblings rights to access and use a pond and pond house on the 67.012 acres, including contingent future right and option to purchase should Martin, his siblings and/or heirs ever desire to sell or otherwise convey. The deed cites acceptance by Martin. There is zero evidence in the record that Martin did not accept the terms, and zero evidence that Martin revoked any privileges or rights, ever, as to his brothers or Plaintiff.

The question becomes whether fee simple absolute estate conveyed prior to Martin's 9/22/2015 deed to Tinsley. (R. p. ___). The deed language in the 1988 conveyance was long argued before the trial judge. Agreement and Acceptance by Martin is recognized by the trial judge, yet ignored entirely. (R. p. ___ 3/27/2019 Transcr. P. __ lines ___). Under motion filed under Rule 56 SCRCP, the court has erroneously viewed the deed language as inoperable, viewed most favorably to the movant in characterizing the same as restraint, limitation, or diminishing factor upon Martin's estate. By design from Causey, it was just that. Martin's acceptance is not disputed. As explained by the Supreme Court in Stroman, a provision in deed that grantee (Martin) would sell property to named persons on happening of certain contingency (desire to sell or otherwise convey) for fixed price held agreement for the benefit of, and enforceable by, named persons. Namely, Causey's other sons in the 1988 deed.

The record before the court is devoid of any evidence that the combination of Tract-A and Tract-B into a "package deal" eliminated the option to purchase, rights and

privileges accepted by Martin for benefit of the other Youmans sons. Both Tract -A, (the 67.012 acreage and pond house) and Tract-B (38.389 acre farm tract), lie situate and adjacent to Plaintiff's residential home acreage in Appleton, South Carolina. Until being forbidden access under threat of contempt from time of the very first court hearing, Hunter Youmans has accessed this pond house property for *years*. (R. p.____ June 21, 2017 transcript). "*Neither Plaintiff nor anyone on Plaintiff's behalf shall enter the land or property during the pendency of this action apart from the limited access permitted by this Order.* A violation of this provision shall be *punishable by contempt*. (R. p. __ at ___ 8/2/17 order, ¶(2) at lines (8)-(10). Subsequent Order of court *forecloses* (sic) by *appearance* Plaintiff's rights under full adoption of cases (sic) cited by the court's order of January, 2019 and by Shealy v. SCE&G, 278 S.C. 132, 293 S.E.2d 306 (1982). (R.p. __ 4/8/19 Order p. 3 ¶2 at lines 6-9). The case pre-dates S.C. 27-5-103(c) by eleven years.

Viewed improperly as first right of refusal and restraint, however, the court has firmly viewed most favorably to movant the 2015 deed language in particular: "*the owner of a fee simple estate has the right to tell others that the land is his (sic) land, not their land.* A right of access directly conflicts with the language granting Martin the fee simple estate (sic). (R. p. __ 1/8/2019 Order p. 3 para 5 lines 4-6). Appellant respectfully avers the court is now construing presumption under 2015 deed viewed punitively against Plaintiff. It occurs after eliminating Plaintiff's access from the point of first June 21, 2017 Order. Under the court's construction and legal ruling, the plaintiff is now an implied trespasser. The court order reminds Plaintiff that legal counterclaims remain pending. "This Order does not end the 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 ...those counterclaims remain pending." (Rp. __ 1/8/2019 Order P. 4 ¶3 at lines 1-4). The message is un-mistakeably clear: Go Away.

The court will decline to hear motion for summary judgment filed by Plaintiff as to these counterclaims concurrently in Greenwood, S.C. March 27, 2019 where both sides consented. Ignoring factual allegations raised by defendants, also, the court goes on to state "*The court expresses no opinion on the other arguments raised in defendant's motion for summary judgment.*" (R. p. __ at __ 1/8/2019 Order, (4) at ¶2 lines 1-2). These would include questions of fact as to enforceability, use and waiver by Plaintiff. (R.p. __ at ___ 10/30/18 Def. Memo. P. 8). The court will decline to hear Plaintiff's motions for summary judgment in Greenwood concurrently with Plaintiff Rule 59(e) motion for reconsideration. (R.p. __ - p. __ Counsel emails with court prior to 3/27/19 Greenwood, SC arguments). Allegations of Waiver would be inherently factual, thus evaded. The court has completed a course begun June 21, 2017 in Allendale. It begins under one party's version of the facts, improperly foreclosing Plaintiff's interest. Appellant respectfully asserts abuse of discretion, misapplication of common law, and ruling without evidentiary support.

The record is devoid of any evidence that Martin ever enforced any right to exclude Hunter Youmans before selling to Tinsley. It is not disputed that Release documents were sought from two other brothers, Stephen Youmans and Kevin Youmans. They are sent under Sander's mailings. (R. p. ___). At some undetermined date and time Tinsley, however, changes locks and security codes on the pond house. (R. at p.____). It

is the first evidence of imposition of exclusivity in the record. It is the first exercise of purported right to exclude Hunter Youmans, specifically. (R. p. ___). It is undetermined whether this occurs before, or after, the September 22, 2015 settlement. Efforts before the trial judge to compel discovery fall up deaf ears, except for SCRCP 34 ruling permitting inspection and photographing of the pond house. This inspection reveals renovations and change of codes by Tinsley. This also is entirely ignored by the court. "*Was that a discovery issue about access to the property or something?*" The court is advised: "The discovery issues have remained on-going. In fact, there were two motions to compel up when you ruled as law in this case." (R. p. ___ 3/27/19 Trans. 3-7). "*I know it was fairly contentious, but go ahead.*" (R. p. __ 3/27/19 Tr. At 9 lines 8-9.) Despite agreement between counsel, the court will decline to hear summary judgment motions by Plaintiff in Greenwood March 27, 2019 requested during Motion argument for Reconsideration.

The ruling of law now at issue before the appellate court is did the court correctly construe a 1988 deed drafted and executed prior to effective date of S.C. Code Ann. 27-5-103(c) (1993). (R. p. ___). It is conceded there is no written contract between Martin and Tinsley prior to the 2015 deed. From estranged siblings long entangled in quarrels and family partnership disputes, a Release and Waiver of the right to purchase is obtained from but two (2) of three (3) Youmans brothers – Stephen and Kevin Youmans. Hunter Youmans never executed the Release Sanders prepares for his signature. On behalf of Plaintiff's, attorney William H. Short, Jr., advised all parties, Hunter does not agree to the sale at this time. (R. p. __ email). The stage is set for rushed, undisclosed settlement date and time in Allendale.

Purchaser Mark Tinsley, himself a lawyer, concedes that there existed no written contract prior to the 2015 deed to Tinsley. "*There is no contract*". In the form of a purported "package deal" the respondent acquired no less than three tracts of land, sold by Martin Youmans amid on-going partnership dissolution disputes with his brother Hunter. Tinsley and Sanders know the brothers do not communicate. According to Tinsley brothers Hunter and Martin "*they haven't spoken in years* (sic). They can't stand one another. *They won't talk.*" (R.p. __ 6/21/17 Trs. P. 11 at 10-13). I was essentially a mediator. (Id. At 12 line 4-5). Tinsley confirms this yet again in sworn deposition: "*I essentially acted as mediator*" (R. p. ___ Tinsley Depo). How then is there no written contract? Because by design Tinsley has intent to personally acquire Youmans land from Martin. Neither the seller (a brother), nor buyer (an attorney) thus have to confirm any written offer or written contract, much less communicate the same to any other of the Youmans brothers.

In ruling at law, the trial judge viewed summary judgment proper because it found that the plaintiff's claims relied on deed language that was invalid and ineffective as a matter of law (in 1988). (R. p. ___ Order). The court erroneously ruled at law that the estate from Causey (father) to Martin (son) was fee simple, thus no further requirement of Waiver or Release by Hunter Youmans will (ever again) be necessary. This occurs despite the apparent necessity and requirement of two (2) other Release instruments obtained from brothers Stephen and Kevin Youmans. The court found the language in the 1988 deed would necessarily "diminish" or "cut down" fee simple estate if it were given legal effect. (R. p. __). The court ignored entirely acceptance by Martin of limited fee, privileges and rights in favor of siblings expressly named in the deed. Viewing all facts

and inference wrongly, the court disregarded the intent of the father / grantor ("Causey") found within the four corners of the 1988 deed. The court will go no further than strictly confined review of the granting and habendum language, not the deed as a whole. The court does so under common law presumption applied to a deed executed prior to 1993: "*A deed from Calvin (sic) 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*". (R. p. __ 4/8/19 Order Para 4).

The court opined that S.C. Code Ann. § 27-5-130 held no application despite statutory modification of the common law in South Carolina in 1993. Section (C) of the statute historical notes attached by Plaintiff memorandum exhibit to the court makes clear "This section *modifies* the common law and only applies to deeds executed after December 31, 1993". The court states it "*did not apply any statute*". (sic). (R. p. __). Failure to consider the statute compounds abuse of discretion first arising June 21, 2019. (R. p. ___). At subsequent oral arguments before the trial judge counsel for plaintiff advised the court "*judge you gotta look to the statute*" (R. p. ___). Yet, the court opines neither the statute of frauds nor S.C. Code Ann. § 32-3-10(4) or § 27-5-130 as applicable whatsoever. (R. p. ___). Make no mistake, however, Hunter's interest in lands are now charged against him; they will be forfeited and will *foreclosed* (sic) by order of the court. Counterclaims involving defendants fact allegations remain standing. The court will only hear one side of the matter, as first evidenced 6/21/2017 record. (R. p. ___ 6/21/2017 tr. P. 8-19, ending line 13).

The court failed to view evidence that the Appellant's right to purchase option on the 67.012 acre pond house implicated, whatsoever. This occurs where there existed no evidence of an underlying contract, no evidence of fully executed Release by Plaintiff, and no less than two (2) other Release instruments obtained prior to settlement from other Youmans brothers. (R. p. __). The court will only hear factual application, ever, from one side. The court ignores letter Exhibits accepted from the bench evidencing that the settlement attorney, Sanders describes the right to purchase as *valid.* (R. p. __). The court failed to view evidence of the validity of option to purchase (acquired over years) of non-exclusivity use and possession most favorably to Plaintiff. Vesting of rights is ignored entirely or otherwise erroneously viewed most favorable to Defendants in ruling as a matter of law. It occurs under motion brought via Rule 56 SCRCP. (R. p. __).The error manifests itself in the court construing the 2015 Tinsley deed language as derived from the 1988 deed. The cases cited to the trial judge by defendants under Shealy v. SCE&G and progeny cases are rulings that occur before the 1993 change in statute S.C. Code Ann. 27-5-103(c). The court adopts these rulings (and *all* authority cited by memorandum of defendants) on summary judgment. None of these cases over-rule or negatively implicate Stroman, supra. Valid and accepted limitation in a fee simple grant gives way to legal error that the deed language is inoperable, or otherwise a first right of refusal (sic), or impermissible restraint on alienation vs. valid agreement in deed accepted by Martin Youmans for benefit of brothers, enforceable by other sons named in the father's deed.

STANDARD OF REVIEW

Appellant respectfully asserts this appeal presents a divided scope of review involving questions of law and equity. The question of law pertains to the validity of deed language and Plaintiff / Appellant's right to purchase under his father's December 30, 1988 deed. The questions of equity pertain to the main purpose of suit below, where both parties sought equitable relief. The question is whether the 1988 deed from Causey to Martin failed to convey fee simple absolute estate to plaintiff's brother, Martin. The case likewise involves stipulation by the parties. During the hearing October 8, 2018, all parties stipulated the issue pertaining to construction of deed was an issue for the court to decide as a matter of law." (R. p. ___ - 1/8/2019 Order at 2, ¶ (4).)

When an appeal involves stipulated or undisputed facts, an appellate court if free to review whether the trial court properly applied the law to those facts. In such cases, the appellate court is not required to defer to the trial court's legal conclusions. J.K. Constr., Inc. v Western Carolina Regional Sewer Auth., 336 S.C. 162, 519 S.E.2d 561 (2001); Duke Power Co. v. Laurens Elec. Co-op, Inc., 344 S.C. 101, 543 S.E2d 560 (Ct. App. 2001). Although as a general rule a deed or contract is to be construed by the court, where a contract is capable of more than one construction, the question of what the parties intended becomes one of fact to be submitted to jury. The existence of a contract is a question of fact for the jury when its existence is questioned and the evidence is either conflicting or gives rise to more than one inference. Smalls v. Springs Indus., Inc., 292 S.C. 481, 357 S.E.2d 452 (1987).

ARGUMENT

It is undisputed that Martin accepted the terms and conditions of his father's 1988 Deed, knowingly or not. It is undisputed there exist no underlying written contract supporting the 2015 "package-deal". Appellant respectfully avers the trial judge viewed the four (4) corners of the underlying 1988 deed in error, failing to properly construe the intent of the grantor as derived from the whole. The language is construed and reviewed under present day common law presumption, ignoring the intent of the Youmans' late father. The court erroneously viewed the 1988 estate as fee simple absolute, strictly focusing upon the granting and habendum clauses in isolation. Atop abuse in discretion, the stage is now set for legal foreclosure under error. "The deeds granting and habendum clause conspicuously includes the language signifying fee simple absolute. They explain Calvin passed title to Martin and "*his heirs and assigns*". (R. p. ___ 4/8/2019 Order). The court goes on to opine that the clauses in the deed are impermissible restraints on alienation, or first right of refusal (sic) vs. option to purchase described in the deed. The court opines the language inoperable as a matter of law. The court fails to view that the brothers had observed the conditions and shared use from the time of 1988 to year 2015.

More importantly, the court inferred erroneously that the year 2015 purported General Warranty language issued to Tinsley conveyed absolute fee simple estate *derived from* Causey's 1988 deed. The court's ruling legally struck down and eliminated equitable interest and any factual development pertaining to vesting of right to purchase of Plaintiff. The ruling eliminated facts pertinent to shared possession over some twenty seven years in Causey's other sons. Hence, the need for executed Release(s). Plaintiff asserted his legal and equitable interest were acquired through years of non-exclusive use

and possession. Prior to granting Summary Judgment, at least two (2) discovery non-compliance motions are filed with the court. Summary Judgment "*is not appropriate, however, where further inquiry into the facts of the case is desirable to clarify the application of law.*" Young v. South Carolina Dep't of Corrections, 511 S.E.2d 413 (S.C. Ct. App. 1999); Carolina Alliance for Fair Employment v. South Carolina Dep't Labor, Licensing & Regulation, 523 S.E.2d 795 (S.C. Ct. App. 1999). Public record confirms that Respondent did not draft or execute any of the Release or Deeds instruments leading up to the closing. Only two (2) of three (3) required release instruments are obtained. Hunter Youman never executes one. Defendants file their discovery responses with the court. Plaintiff files the little discovery that can be collaterally obtained from settlement attorney in the court record. (R. p. __ at ___).

I. Was it abuse of discretion for the trial judge to grant summary judgment under ruling of law where there existed pending motions by Plaintiff for discovery noncompliance?

Yes. The trial judge granted Summary Judgment by Form – 4 Order November 2, 2018 and subsequent formal Order of January 8, 2019. Reconsideration was denied by Order dated April 8, 2019. Prior to the grant of summary judgment, Plaintiff had filed at least two (2) motions related to discovery non-compliance. The discovery issues are never fully resolved. "*In fact, there were two motions to compel up when you ruled as law in this case*". The court responds: "I *know it was fairly contentious, but go ahead.*" (R. p. __ 3/27/19 p. 9 line 8-9). The court declined to hear Plaintiff's Motion for Summary Judgment in Greenwood, SC arguments on March 27, 2019. (R. p. ___ - Court emails).

At some *undetermined* date, Tinsley changed locks and security codes to the pond house. (R. p. ___) Summary Judgment is granted as legal ruling of law on the 1988 deed language. Abuse occurs where the facts are yet not fully developed, foreclosing full factual development. This occurs where the trial judge has heard facts but from one party on record. (R . p. ___ 6/21/17 Transcr.). The court hobbles any of Plaintiff's ability to factually establish vesting through the yet-undetermined date that Martin decided to sell to Tinsley, or date Tinsley changed locks and codes. The court did require Defendant to permit the closing attorney Walter Sanders to produce to Plaintiff any records from the closing, documents that Tinsley acknowledged he, as lawyer and purported settlement attorney, somehow did not possess. (R. p. ____, 8/2017 Order). Hence, Tinsley could not, or would not, be compelled to produce them in discovery. Discovery ultimately received from Tinsley and Sanders evidences conflicting fact questions, and no way to determine the trigger date of Martin's decision to sell. Thus, inability to show vesting of plaintiff right to purchase foreclosed by trial Judge on January 8, 2019. (R. p. ___). Until this occurs, Hunter enjoyed years of use and non-exclusive possession of the pond house. The court opines that "If the paragraph granting Martin's brothers (sic) 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. (R. p. ___). The court ignores acceptance by Martin. The court finds the conditions and language would diminish or "cut down" fee simple estate if given effect. *Id.* In this way, the court

erroneously views law and fact most favorably to defendants, opining "*there is no reference in the deed to any remainder interest, reversionary interest, life estate, or other interest recognized by law.*" The court has in error construed an option right to purchase conversely as a first right of refusal. The right to purchase is a valid interest recognized by law.

The record in the case is devoid of documents evidencing Martin ever excluding Hunter (or the other Youmans brothers) from the pond house property; the right to exclude being the most basic of fee simple absolute rights. The record of the precise date upon which Tinsley locks out the Plaintiff by changing codes and locks cannot be determined. Not unlike the settlement date and time, this affirmative act by Tinsley occurs without *any* notice to plaintiff. (R.p. ___ - Tinsley Deposition). From the date of the first hearing in this case - June 21, 2017 - Plaintiff Hunter Youmans was by court Order forbidden to go upon property that for decades he had enjoyed under his father's deed. (R. p. ___). The trial judge's Order of January 8, 2019 goes one step further, however. In misapplying current common law to the 1988 deed, the court ruled title to Martin granted fee simple, including the *right to exclude* others. In year 2015 at various occurrences, slowly, the settlement attorney Walter H. Sanders, Jr. , via mailings, extracts Release instruments from all brothers, save only Hunter Youmans. (R. p. ___ ; R. p. ____ ; R.p. _____). No executed Release is ever obtained from Hunter Youmans, yet the package-deal goes forward.

It is undisputed that Martin wished to sell. It is conceded that there exists no underlying contract. (R. p. ___). Appellant respectfully asserts abuse of discretion by the trial judge in grant of summary judgment, particularly in light of the little discovery

permitted and no supporting evidence in the record. Plaintiff asserts abuse of discretion where the court does not permit Plaintiff to rebut legal and factual counterclaims raised by Defendants by hearing Plaintiff's Summary Judgment Motion. Appellant respectfully asserts that it was abuse of discretion for the court to foreclose factual development of when, precisely Plaintiff was vested with rights, if so; when exactly and by whom he was excluded; and what, precisely, the contract was, date, its terms, and consideration were. And, lastly, whether plaintiff's option right to purchase had factually vested over years. The appellant asserts it was error where the court fails to recognize whether an agreement was *accepted* by Martin in the 1988 deed affecting plaintiff's now vested interests in the form of a valid purchase right under deed. Appellant avers trial judge abuse of discretion given Plaintiff's right to purchase arose over years of access and use of the pond prior to the Tinsley acquisition. Twenty Seven years had elapsed from the point of December 30, 1988 deed to September 22, 2015 Tinsley deed. Lastly, defendants failed to produce any evidence of contract and absolutely no evidence of voluntary Waiver, Revocation or an executed Release by Hunter Youmans. Walter H. Sanders, Jr. prepares the Release sent to legal counsel for Hunter Youmans, which Hunter never agreed to execute. The reason none of these things could be produced by respondents is simple: they did not exist.

Abuse of discretion occurs at the trial court level where via legal counterclaims Plaintiff becomes an implied trespasser, factually, under the court's subsequent orders and unwillingness to hear plaintiff's motions. This occurs despite decades of use and access to the 67.012 acre pond and pond house under the 1988 deed. The deed is recorded of public record for a reason. Purchasers would have constructive notice of the deed terms. The settlement attorney, who drafted and executed the 1988 deed for Causey

Youmans, likewise recognized the need for executed waiver and Releases in order to convey fee simple to Tinsley. (R. p. ___). The court failed to view evidence of a valid right to purchase, itself created by the settlement attorney Sanders most favorably to Plaintiff. The court accepts from the bench, yet entirely ignores, exhibits describing the validity of the right to purchase. (Sanders letters to other Youmans brothers. (R. p. ____). The validity or non-validity would properly be factual questions properly reserved for jury.

II. Did the court error in applying common law by retroactive application of post-1993 presumptions under S.C. Code Ann. § 27-5-130(c) in ruling as law that the 1988 deed conveyed fee simple estate to Martin?

Yes. The trial court erroneously misapplied common law, in error ruling Tinsley received fee simple absolute estate derived from Causey's 1988 deed. The court misapplied present common law presumption of validity of deed language in construing a deed executed prior to effective date of the 1993 statute. (R. p. ___). S.C. Code Ann. §27-5-130(c). It was brought to the trial judge's attention under requests to reconsider heard in Greenwood, South Carolina. (R.p. __). The court order states: "*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.*" Plaintiff's memorandum argued the presumption applied only to deeds executed after December 31, 1993. The 1988 deed from Causey (father) to Martin (son) was executed five (5) years prior on December 30, 1988. The estate conveyed was predicated on grantee (Martin) agreement and acceptance. The trial court failed to apply Stroman while failing to view Plaintiffs' rights to purchase viewed erroneously in favor of the movant under ruling at law. The court ignored the

length of time under which Plaintiff's use of the property, under Martin, enabled vesting of Plaintiff's right to purchase. Foreclosure of factual development by court order occurs January 8, 2019. The trial judge recognizes Hunter's access and use, but views this in error most favorable to movant.

"*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.*" (sic) 4/8/19 order at Para 3). Pursuant to S.C. Code Ann. Section 27-5-130(c) as of September 22, 2015, the Plaintiff alleged he held legally valid right to purchase, arising over decades of use and possession under deed of Martin. The court, in error, views the 2015 deed language presumptively in favor of the movant in granting summary judgment. Under the court's application of common law, the 1988 deed is like the 2015 deed. The court fails to consider the statute of frauds where Plaintiff's rights in estate lands are challenged by third party under the guise of the Rule Against Perpetuities, and allegations of purported voluntary waiver. (R. p. __ - Def. answer and cc's). All such allegations would be inherently factual, where no evidence of written contract.

The court ignored evidence of enforceable option rights and failed to view evidence of valid right and option to purchase most favorably to plaintiff as non-movant in ruling under motion filed pursuant to Rule 56 SCRCP. The court erroneously rules grantor and grantee intent focusing entirely on the 1988 deed granting and habendum language. The Court ignored that amid three (3) Releases sought from the Youmans brothers, the Plaintiff Hunter Youmans refused to execute any such waiver or release. The closing and settlement goes forward, nonetheless, on September 22, 2015. Only two (2) of three (3) written and signed Release documents are obtained. (R. p. ___). By purported general

warranty language Martin and Tinsley via attorney Sanders convey to the Tinsleys without first acquiring an executed Release by Plaintiff. The stage is now set for defendants' unsubstantiated waiver and perpetuities arguments that can never be proven, and hence, the need for ruling at law alone without further factual application or it will not be permitted or required.

In viewing the granting clause of the 1988 deed in isolation, the court ignored the intent of the grantor that should have been gleaned from the whole deed; it failed to ascertain intent of the grantor (Causey Youmans) by properly viewing the four corners of the deed in its entirety. In so doing, the court misconstrued the agreement of Martin for benefit of named persons in the deed, Causey's other sons. The question becomes whether Martin was conveyed limited fee simple by Causey where later full written, signed Release would need to be obtained from the brothers. Without it, Martin held shared possession and factually had never exercised revocation; hence Martin was without fee simple absolute right the right to exclude other brothers. *Why else would no less than three (3) other Release instruments be sought in the first instance?* To extinguish equitable rights of the Youmans' brothers, globally, of right to purchase family lands. The record of devoid of evidence that Martin ever excluded, or sought to exclude plaintiff. Absent Tinsley's change of locks and entry codes, the record is completely devoid of Martin revocation of Hunter Youmans' rights, specifically, to the pond and pond house. The record is devoid of evidence that Hunter's rights were ever voluntarily waived in any manner. Revocation and extinguishment occur by court order.

III. Is the trial court's ruling at law error and abuse of discretion where the court failed to view all facts and inferences most favorably to Plaintiff Hunter Youmans?

Yes. The trial court's order of January 8, 2019 indicates "*The court has viewed all facts and inferences in the plaintiff's favor because the plaintiff is the non-moving party.*" Yet, the court's subsequent April 8, 2019 Order reflects "*Also, the court did not view the facts in anyone's favor.* (sic)". The two orders conflict. The second order seeks to legally evade factual proof of vested purchase right held by Hunter. "*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.*" Post 1993, the deed language indeed may have been enforceable. Prior to 1993, however, it would constitute Martin's acceptance of limited, fee simple for the benefit of other named sons. Limited fee simple as conveyed by design of the Youmans' father, through legal counsel Sanders. The deed evidences agreement and acceptance by Martin, ignored by the trial judge. In argument before the court October 8, 2018 the court indicated "And I'll be glad - - if you want to turn in a case that says that my idea of construction is wrong, in other words, it is factual based as opposed to a matter of law based on the four corners of this *contract* (sic), I'll be glad to hear that too." It is the first of at least two instances of the trial judge noticing yet ignoring agreement within the deed accepted by Martin for the benefit of his brothers.

In later arguments for reconsideration, in reference to agreement: "*There's an agreement*? In all candor, Mr. Halford, I do not recall any agreement. *The agreement between the Tinsleys and the grantor in this case*? (sic) (R.p. __ 3/27/19 Trans. 7 at 9-15.) At this stage, the court is construing language in the wrong instrument, again, by reference to the 2015 "Tinsley" deed. Prior to this, the court permitted latitude to Plaintiff counsel to produce a case standing for the legal proposition that the court wanted an answer to: could fee simple estate be limited and still valid under South Carolina law.

This occurred at the October 8, 2018 argument before Judge McIntosh in Allendale. (R. p. ___ 10/8/2018 Transript p. 39). With court permission Plaintiff post-argument forwarded Stroman v. South Carolina Power Co., 168 S.C. 538 (1933) to the court, standing for the precise legal proposition that in a deed an agreement that grantee would sell property to named persons (*here brothers*) upon the happening of a certain contingency (*Martin determination to sell outside the Youmans family*) was held not void as attempt to limit fee simple. (R. p. __ 10/11/2018 Halford letter to McIntosh).

The multitude of cases cited by defendant, conversely, all fall under common law presumption arising after statutory abrogation of South Carolina common law in 1993. S.C. Code Ann. § 27-5-130(c). The case law forwarded by defendants enforce present-day deed construction under accepted principals of law that a fee simple grant under inheritance language "heirs and assigns" cannot be cut down, restricted, or diminished. Appellant respectfully asserts that acceptance of agreement framed in a 1988 deed, by contrast, did not cut down, restrict, or limit the estate to Martin. It is undisputed Martin accepted the deed from his father. By agreement and for the benefit of other sons.

IV. Was it abuse of discretion leading and error for the court to rule without supporting evidence of Revocation, Waiver or Release?

Yes. The court failed to view no written signed Release and validity of plaintiff's right to purchase vested over decades of shared use and possession under the 1988 deed. There is no evidence of revocation. While conceded that no written contract exists, the record is otherwise devoid of any evidence of knowing and voluntary wavier by Plaintiff. Such equitable rights would include use, enjoyment, nonexclusive possession, or relinquishment of known Option Right of Purchase by execution of Release. Prior to the

Tinsley acquisition, the closing attorney fails to procure an executed Release by Hunter Youmans a similar release to the two (2) sought from other Youmans brothers. Some of the brothers did not speak due to past intra family quarrels and disputes.

Brothers Stephen Youmans and Kevin Youmans both execute purported Release of their interests in June, 2015 under specious circumstances. The package-deal does not occur until September, 2015. Release instruments are mailed to Kevin and Stephen Youmans by Sanders. To be sure, all Youmans brothers are expressly identified by name in the 1988 deed Sanders prepared. Because no contract exists (or can be produced), it is factually undetermined when, precisely, Martin decided to contract upon or convey equitable interests to Tinsley. The South Carolina Statute of Frauds, S.C. Code Ann. §32-3-10(4), et. seq. mandates agreements must be signed executed, especially to charge someone upon any contract or sale of lands... *or any interest in or concerning them.*" Id. The court finds this statute not applicable. (R.p. __ p. __ 3/25/19 P Memorandum). At no place in the record before the court record can respondents demonstrate knowing or voluntary waiver by plaintiff, which would be inherently factual. The statutes cited and facts can be circumvented. It can occur where the trial judge grants summary judgment under stipulation and strict ruling of law on deed language. It occurs without any evidentiary support of Revocation, Release, written contract, and without viewing lace of evidence most favorably to the non-movant Hunter Youmans. Validity of the option to purchase as described by attorney Sanders, at minimum, would be a question of fact for the jury.

Under no less than two (2) filed motions to compel – *the second never ruled upon* – the court ruled as law granting Summary Judgment where it is conceded there existed no

evidence of contract and no executed Release by Hunter Youmans. Abuse of discretion occurs where the court hears but from one (1) party's version of fact in this case, defendant and attorney Mark Tinsley: "There is no contract. It's very clear. There is no written contract." The trial judge permits but one litigant the opportunity to be heard, leading to abuse of discretion. (R. p. ___ 7/21/17 Trancr. P. 8 at 12-14.). On record, Tinsley's factual version of events goes forward: "I didn't know I needed to get a contract. *I learned a lot in this, Your Honor. I didn't know that Hunter Youmans would lie to me.* Now, I do. (R. p. __ 7/21/2017 Trans. P. 19 at 3-5.). From this point forward, the plaintiff is denied equal access and right to be fully heard by the trial court, similar to Tinsley. It is abuse of discretion, leading inevitably to error of law in later rulings.

The Order of the trial judge entered November 28, 2018 transforms the Plaintiff to implied Trespasser over the years, improperly and wrongfully. The legal ruling at Summary Judgment is premised upon common law abrogated by statute, in 1993. S.C. Code Ann. §27-5-103(c). The trial judge refuses to even recognize the statute was argued before the court, in its Order of 4/8/2019 "*Neither party argued this statute to the Court when arguing summary judgment* (sic)" evidencing the court does not review argument memorandums and exhibits forwarded prior to oral argument. (R.p. ___ - Ptf Mem in Opp. Ex.#4 3/27/2019). The issue was preserved by both argument and memorandum filed with the court, yet ignored.

The court in error opines the purported 2015 general warranty deed from Martin to Tinsley conveyed fee simple absolute estate, never *accepted* by Martin from his father. Moreover, the court grants judgment as a matter of law upon the parties' stipulation where no Release and court-ignored factual validity of purchase rights described by

Sanders. The language of the 2015 deed to Tinsley cites general warranty language, impliedly and improperly viewed by the trial judge as derived from the 1988 deed. Less than fee simple was accepted by Martin. Even if the reverse where true, the record is devoid of any evidence of Revocation, or exercised right to exclude plaintiff, over twenty seven years. The record is devoid that Martin ever revoked or denied access to Plaintiff, similar to Tinsley deriving so at some un-determined date by changing codes. (Exhibit - __ p. __ Plt. Memo in Opp SJ). Plaintiff's rights were never extinguished, thus requiring a Release of not just two, but three Youmans brothers. This would have to occur in order that Tinsley be vested with fee simple estate. These characteristics of estate ownership were, by design, never conveyed to Martin from Causey in 1988. The desire of the father is clear, created via attorney (Sanders) deed. The deed is then recorded of public record for a reason. The intent of the grantor is clear and unambiguous but should have been viewed under lens of the correct statutory and common law principals of law not circumventing fact.

CONCLUSION

Appellant respectfully asserts abuse of discretion by the trial judge and error in mis-application of South Carolina common law to a deed executed prior to 1993. This occurred where the trial judge failed to view record evidence and all inferences most favorably to the non-movant, including on-going discovery non-compliance. Summary Judgment is granted by the trial judge ruling at law upon a deed where the court erroneously infers fee simple estate derived from the 1988 deed in error. Even if the 2015 deed drafted by Walter H. Sanders, Jr. is in proper form and language under present state of common law, it could only convey rights accepted and agreed to by Martin from the

Youmans' father in 1988. The court fails, entirely, to view acceptance most favorably to the Plaintiff ruling at law. The agreement in the deed is for the benefit of other sons, namely Plaintiff Hunter Youmans, Stephen Youmans and Kevin Youmans.

Martin Youmans accepted less than fee simple from the Youmans' father. He accepted limited and shared non-exclusive use and possession. Even if correct that Martin could exclude others at any time after December 30, 1988, the issue is that Martin never exercised such exclusivity through revocation before the factually-undetermined date he wished to sell to Tinsley. Thus, Martin could not convey fee simple absolute to Tinsley, absent Executed Release obtained from all Youmans bothers. Hunter refused to sign. Appellant respectfully avers it was legal error and abuse of discretion to wrongfully infer Revocation, Release or Waiver by Plaintiff affecting vested and valid option right to purchase lands that had been in the Youmans family for decades. This should be particularly so where no evidentiary support for the ruling. Record evidence demonstrates the settlement attorney(s) neglect to get signed contracts and executed Release prior to settlement.

Plaintiff respectfully seeks the Court of Appeals Reverse and Remand the case, including all counterclaims, for jury trial before the Circuit Court.

Respectfully submitted,

HALFORD & NIEMIEC, LLP

J. Cameron Halford
S.C. Bar No. 17184
238 Rockmont Drive
Fort Mill, S.C. 29708
803-547-6618
803-547-6638 fax
E-mail: cam@fortmilllaw.com

July 31, 2019

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

Case No.: 2016-CP-03-00286
Appellant Case No.: 2019-000736

William Hunter Youmans, ...APPELLANT

vs.

Mark B. Tinsley and Diane E. Tinsley, ...RESPONDENTS

PROOF OF SERVICE FOR INITIAL BRIEF OF APPELLANT, DESIGNATION OF MATTER AND SCACR 211(b) CERTIFICATION

I hereby certify that I am the Attorney for the Appellant in the above captioned Appeal and that I did on July 31, 2019 serve by U.S. Mail and e-mail a copy of Appellant's Initial Brief and Designation of Matter upon counsel for Respondents, addressed as follows. I further certify that Appellant's Initial Brief complies with Rule 211(b)(1) and Rule 211(b)(2) as to content requirements.

Blake Hewitt, Esq.
Bluestein Thompson Sullivan, LLC
1614 Taylor Street,
Columbia, South Carolina 29201
Attorney for Respondents

Mark B. Tinsley, Esq.
265 Barnwell Highway,
Allendale, South Carolina 29810
Respondent

Woodrow F. Gooding, Esq.
Mark B. Tinsley, Esq.
Gooding & Gooding, P.A.
265 Barnwell Highway,
Allendale, South Carolina 29810
Attorneys of Record for Respondents

Respectfully submitted,

HALFORD & NIEMIEC, LLP

J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
Email: cam@fortmilllaw.com
Attorneys for Appellant Hunter Youmans

July 31, 2019

LAW OFFICES
HALFORD & NIEMIEC, L.L.P.
A Registered South Carolina Limited Liability Partnership
Including Individually Owned Limited Liability Companies and Offices
238 Rockmont Drive, Fort Mill, South Carolina 29708
4609 Charlotte Highway, Suite 1, Lake Wylie, South Carolina 29710

Telephone: 803-547-6618
Facsimile: 803-547-6638

J. Cameron Halford, Esquire
cam@fortmilllaw.com

Matthew R. Niemiec, Esquire
matt@fortmilllaw.com

July 31, 2019

Jenny Abbott Kitchings, Clerk of Court
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: William Hunter Youmans v. Mark B. Tinsley and Diane E. Tinsley
Appellant Case No.: 2019-000736

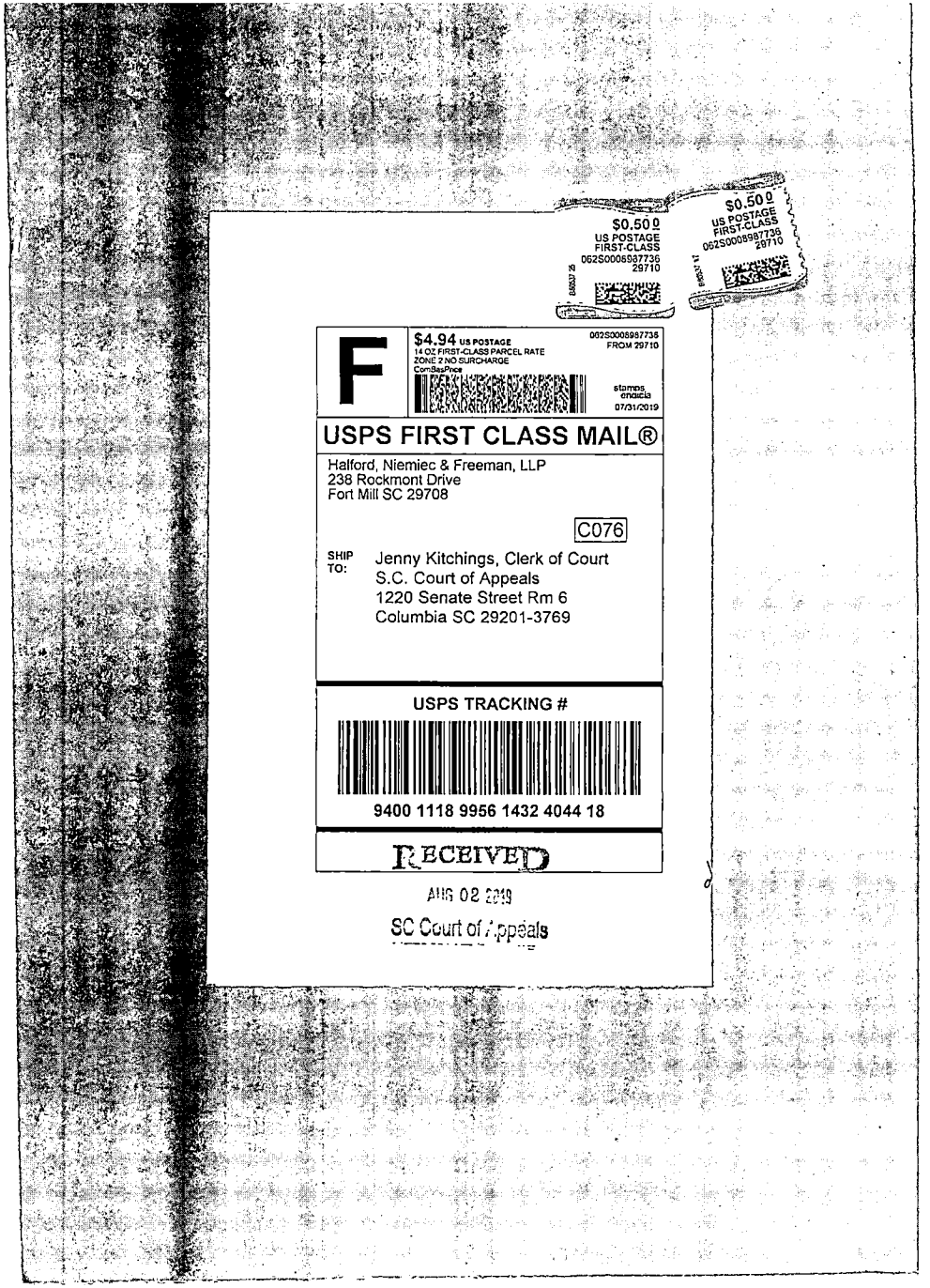
Dear Ms. Kitchings:

Enclosed please find the original and one copy each of the Appellant's Initial Brief along with the Designation of Matter and SCACR 211(b) Certification regarding the above-referenced matter as well as the original and one copy each of the Proofs of Service. In this regard, I would appreciate your filing these documents and returning the clocked copies to my office in the envelope provided. If you have any questions regarding the enclosed or this matter, please do not hesitate to contact my office.

Sincerely,

J. Cameron Halford

JCH:tml
Enclosures
cc: Mr. Hunter Youmans
w/enclosures
Blake Hewitt, Esquire
w/enclosures
Woodrow F. Gooding, Esquire
w/enclosures
Mark B. Tinsley, Esquire
w/enclosures



$0.50
US POSTAGE
FIRST-CLASS
062S0006987736
29710

$0.50
US POSTAGE
FIRST-CLASS
062S0006987736
29710

F

$4.94 US POSTAGE
14 OZ FIRST-CLASS PARCEL RATE
ZONE 2 NO SURCHARGE
ComBasPrice
062S0006987736
FROM 29710
stamps endicia
07/31/2019

USPS FIRST CLASS MAIL®

Halford, Niemiec & Freeman, LLP
238 Rockmont Drive
Fort Mill SC 29708

C076

SHIP TO: Jenny Kitchings, Clerk of Court
S.C. Court of Appeals
1220 Senate Street Rm 6
Columbia SC 29201-3769

USPS TRACKING #

9400 1118 9956 1432 4044 18

RECEIVED
AUG 02 2019
SC Court of Appeals