

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

R. Lawton McIntosh,
Circuit Court Judge

Appellate Case No. 2019-000736
Case No. 2016-CP-03-00286

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SC Court of Appeals

William Hunter Youmans,Appellant,

v.

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

APPELLANT REPLY BRIEF

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STATEMENT OF ISSUES ON APPEAL

Appellant respectfully responds that the framing of issues on appeal sought by Respondents can be re-stated as qualified:

Whether the trial judge correctly held certain language in a 1988 deed invalid, unenforceable, and inoperable as a matter of law enabling a fee simple absolute estate to pass Respondent through subsequent conveyance in year 2015.

STATEMENT OF THE CASE

This case is about whether the trial court's ruling was controlled by abuse of discretion and controlling errors of law. The case is not simply about whether two paragraphs in a 1988 deed were legally enforceable. The record below reflects the trial judge construed two (2) deeds, not one. The 1988 deed was from a father Causey Youmans to one of his sons, Martin. The other is a conveyance of September 22, 2015 from Martin to the Tinsleys.

Causey Youmans is deceased and is not a party to this litigation. Causey was the father of four boys identified in the 1988 deed: Martin, Hunter, Stephen and Kevin Youmans. In 1988, he deeded approximately 68 acres of property to his son Martin for five dollars and no/100 and "*love and affection for my son.*" The deed expressly identifies his three (3) other sons. The subject property is identified in Complaint Exhibit-B (67.012 acres). The property contained a pond and pond house. In September, 2015 Martin sold this property – *and two others* – simultaneously to Tinsley. Martin is not deceased, and not a party to the case below. The appellant here is his brother, Hunter. Hunter sought four (4) things by way of Complaint:(1) Declaratory Judgment, (2) to set aside the Martin-Tinsley conveyance of 9/22/2015; (3) an action to compel right of purchase and quiet title, and (4) Hunter sought injunctive relief restoring his use and access to the pond and pond house, after alleged ouster by Tinsley. All of the causes of action necessarily implicate his father's 1988 deed to Martin, and character of estate conveyed to Martin. Affidavits reflect the pond house, or cabin, was part of Causey's childhood home relocated to the pond by the brothers. (R. p. ____).

The two long-disputed paragraphs in the 1988 deed to Martin reserved a right within Martin's brothers (including Hunter) "*to use the pond house and pond*", contingent upon all brothers sharing the costs of maintaining it. That contingency was relevant below as Tinsley alleged by initial Counterclaims Hunter had waived his rights by not maintaining the pond and pond house. No proof is ever produced by Tinsley despite lengthy and successive discovery

motions, below. If unable to show Waiver or Revocation, the Initial counterclaims by Tinsley likewise pleaded a fall-back position: the *Rule Against Perpetuities*. It is raised by way of Affirmative Defense (R. p. ___). The defense is later abandoned under oral argument and amended pleadings as it becomes evident South Carolina's statutes abrogated the rule, not unlike the statutory abrogation of common law the trial judge will not consider pertaining to deeds. S.C. Code Ann. 27-5-130(c). (R. p. ___). Both were argued before the court as reflected by the record. (R. p. ___).

The second paragraph of this 1988 deed purported to reserve *something more than use* to Martin's siblings. Respondent incorrectly designates this reservation as a *first refusal* or a *right to be offered* vs. option to purchase. This provision said that if Martin or his heirs ever desired to sell the property, they were bound to first offer the property to Martin's brothers and their heirs at a stated ninety percent (90%) of the property's fair market value. It is undisputed Martin desired to sell in 2015, at some factually un-determined date. Plaintiff had long argued vesting of rights through decades of usage by an heir (Hunter) who was family, brother and intended beneficiary under Causey's deed and Martin's agreement as grantee. It is undisputed in this case that Martin accepted the deed.

The Defendants timely filed their answer with counterclaims January 17, 2017. The Answer and Counterclaims are later amended. (R. p. ___) The claims allege that Hunter had ample notice and opportunity to purchase the property knowing of the impending Tinsley purchase. Yet, oddly, Defendants can produce no written offers and no contracts pertaining to what is described as a *package-deal* by Tinsley. Defendants' counterclaims also alleged that Hunter had trespassed on the pond property and damaged the property, also never proven by any form of documentary evidence. The discovery issues are the cause of two successive motions to compel discovery

below. One such claim alleged Hunter had cut drain pipes and caused water from a neighboring pond on Hunter's adjacent land to flood the property Tinsley purchased from Martin.

The court heard Tinsley's motion for summary judgment in October, 2018. (Oct. Tr. P. 1). This is some two years after the case was filed. No less than two (2) circuit judges have recused in this Allendale case, creating delays. Judge R. Lawton McIntosh is the first judge to hear motions in the case on June 21, 2017. This appeal only involves Orders of Judge McIntosh. In November, 2018 the court via Form-4 grants summary judgment. (11/28/18 Form – 4). This is later confirmed in a formal order. (1/18/19 Order). The circuit judge concluded the alleged rights of “use” and to be “offered” the property violated common law rule that deed language granting an estate (Causey to Martin) in fee simple absolute may not be “limited” or “cut down” by subsequent words in the same instrument. (Id. P. 3). However, as noted above the court reviewed not one, *but two*, deeds in granting summary judgment. Hunter timely filed a motion for reconsideration, heard by Judge McIntosh (with consent of all parties) in Greenwood, South Carolina in March, 2019. (3/27/19 Tr. P. 1). The court will not agree to hear Plaintiff motions for Summary Judgment the same date, but cites no reason where all parties had consented. (R. p. ____ corr.). The court's Order confirms that defendants' counterclaims remain pending. Again, the message is clear. The circuit court entered a Form-4 denying reconsideration on March 28, 2019. (3/28/19 Form-4). The order is confirmed in a written Order filed April 8, 2019. From these Orders, Hunter now appeals to this court.

STANDARD OF REVIEW

The review by this court is *de novo*. This is an appeal of grant of summary judgment. The case involves the trial court review of two deeds, a statute, and Rule 56 SCRPC standard in granting summary judgment. Upon review, an appellate court reviews the grant of summary judgment under the same standard as the trial court. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Summary judgment is appropriate when there is no genuine issue of material fact and

when the moving party is entitled to judgment as a matter of law. “[t]he construction of clear and unambiguous deed is a question of law[.]” In the absence of fraud, the construction of a clear and unambiguous contract is a matter of law. Although as a general rule contracts are to be construed by the court, where however a contract is capable of more than one construction, the question of what the parties intended becomes one of fact to be submitted to the jury. “The issue of 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”. Small v. Springs Indus., Inc., 292 S.C. 481, 357 S.E.2d 452 (1987). Summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusions to be drawn therefrom. MacFarlane v. Manly, 274 S.C. 392, 264 S.E.2d 838 (1980).

REPLY ARGUMENT

Stated somewhat differently than proposed by Respondent, the case is about whether two paragraphs in a year 1988 deed were legally enforceable, thus enabling Tinsley to acquire fee simple absolute estate from Martin. Settlement attorney Walter H. Sanders, Jr. drafted the purported general warranty verbiage in the 9/22/2015 conveyance from Martin to Tinsley. He likewise drafted the 1988 deed for Causey, identifying all sons. It is not disputed that Sanders drafted all Release instruments, including the un-signed Release sent to Hunter’s lawyer. (R. p. ____). Hunter’s signature is never obtained prior to settlement.

Under the trial court’s rulings of law and grant of summary judgment, the 9/22/2015 Tinsley deed and the 12/30/1988 Martin deed are *compared*; the trial judge erroneously construes the 1988 deed *as like* the 2015 Martin- Tinsley Deed. Appellant respectfully avers that they are not the same, and the trial judge erred. The trial court opts for alleged limitations argued by defendant under the line of cases cited alleging invalid and impermissible limits upon a grant of

fee simple title, inclusive of Style Craft, the Abbeville case, and Webb vs. - - the Hunt vs. Forestry Commission..and *also one more (sic) Sanford*, and that it is an attempted limitation (sic) after the grant of fee simple title. *Do you disagree with that proposition?*” (R. p. 25 lines 14-23). The court attempts to fence in plaintiff to acknowledging that review of deeds is strict matter of law... “*Do you disagree with that proposition?*”. Argument pertaining to vesting of Hunter’s rights as heir under under is father’s deed to Martin is ignored entirely under the court’s reasoning: “*So, if that deed violates the rule as expressed in the cases we (sic) just cited, and it was cited by defense counsel, wouldn’t that be ineffective to vest anything ?*” “No sir. It vested for years (sic)”. (Rp. 10/8/18 p. 26 at 15-25). Secondary sources are cited as restraints or limitations, adopted cart blanche by the trial judge to evade facts implicating waiver and/or revocation of Hunter’s rights as heir. 61 Am. Jur. 2d Perpetuities, Etc. (R. p. ___ at ___). Stroman is later forwarded to the court to answer the court’s inquiry – advanced as proposition that fee simple estate could be limited, as it was in this 1988 deed. Established fact is disregarded by failing to view the evidence and inferences in a light most favorable to the non-movant.

“*It’s not a matter of fact (sic). It’s a matter of construction of the deed (sic) as to whether or not it’s a fee simple grant with subsequent limitation, or immediate vesting of some equitable or other type of interest in this property that gives him some rights in this suit.*” (R. p. 33 lines 3-9). “*And that’s a question of law to be decided today as opposed to a trial where facts - - (*omission) there’s no facts that really need to be borne out about this, is there?*” The trial judge further postures the inquiry as follows: “I mean, do you disagree with the proposition or the *general rule (*sic) that you can’t grant a fee simple title, and then, subsequent in the same document, attempt to limit that grant of fee simple title?*” Response by Plaintiff counsel is “*I agree with the proposition in general*” and “*had the interest not been vested.*” (R. p. 26 lines 2-4). The court

explained in the Order denying reconsideration that it did not apply any statute in determining the *language* (sic) in Causey's deed was language of fee simple absolute. The character of the estate conveyance from Causey to Martin, respectfully, was ignored by trial court in looking to the 2015 deed's verbiage. The stage is set forth the trial court to rule at law predicated on the 2015 deed, a subsequent conveyance. (R. p. ___ at ___ 10/8/18 SJ). The character of estate conveyed to Martin in 1988 is mis-judged in reference to the verbiage of the Tinsley deed and failure to consider statute.

As summarized by Respondent, the Youmans' late father Causey Youmans is deceased and not a party to this litigation. In 1988, Causey deeded roughly 68.015 acres to his son Martin. The property contained a pond as well as a pond house, or cabin. In year 2015 Martin then sells this property, *and others*, simultaneously to Respondent Mark Tinsley and wife. This occurs in one sitting on 9/22/2015. The settlement and closing of these properties is the "*package-deal*" described in the record below by Tinsley. The trial judges indicates the package deal is something he does not understand. "You keep using that term "*package deal*", and I'm not sure if I comprehend what a package deal means besides there were three parcels included in the transfer." (R. p. 19 at 13-16). The term "*package deal*" first appears in the record 6/21/2017 through Tinsley's un-sworn statements and self-argument to the court around his own legal counsel: "*So, technically there's three. Technically, it was a package deal. He had to buy it all* (sic)". (R. p. ___ 6/21/17 Tr. P. ___ lines ___). Neither Tinsley or Sanders can ever produce a written offer or contract confirming this, however. The record is devoid of written offers, contracts, or anything which would satisfy the statute of frauds. The case is devoid of any evidence of Waiver, Revocation or Release signed by Hunter.

Respectfully, Respondents' arguments rest on a mistaken view that option purchase rights of an heir derived under deed is not an interest recognized in law, as far as the *Tinsleys have been able to discover (sic)*. (Resp. Initial Brief p. ___). It is difficult to see the forest for the trees, sometimes. The validity of option purchase rights by heir under a purported package-deal entered into with Plaintiff's estranged brother can be difficult to see, indeed, particularly where there exist no written offers or no written contract. It is no different a view than one does not need a contract, and didn't know one needed a contract. (R.p. ___ at ___). Tinsley can never produce any material evidence, whatsoever, of claims of trespass, nuisance, waiver, revocation or release by Hunter.

The factual questions foreclosed under trial court ruling at law is that Hunter held vested option to purchase rights as heir as of year 2015 where no evidence of Waiver, Revocation and/or Release – all inherently factual. Hunter's use of the property spanned twenty-eight years. Martin's decision to sell to anyone other than his brothers, triggered vesting of anything not violating the *Rule Against Perpetuities*. The land once was titled in Causey's name, only. It conveyed to Martin December 30, 1988. The deed contained an agreement for the benefit of Causey's other sons, enforceable by those sons. Martin accepted the deed as written. The record is devoid of any attempt by Martin to exclude, save only the 9/22/2015 un-announced closing settlement to Tinsley. Tinsley first exercised exclusivity, barring Hunter (R. p. ___) after the closing. Hunter is later refused access to the property. On 6/21/2017 the court grants inspection rights as part of discovery motions, but later ignores entirely what is found by way of inspection: ouster. The court goes further, however, ordering Hunter not to return to lands he accessed for decades under his father's 1988 deed. The pond house becomes front and center, as Hunter is now locked out. (R. p. ___).

Deposition testimony evidences that Tinsley, without notice, changed locks and installs codes on the front door. "*You know, I don't think I ever told Hunter about that.*" (R. p. ___ Tinsley

depo p. – at ---). Closing settlement date, change of possession, and installation of codes occur secretly without notice. Facts implicating ouster are ignored entirely by the trial judge. Facts implicating Waiver, Revocation and/or Release are foreclosed under the judge’s ruling at law. The court has accepted non-sworn factual testimony but from one person beginning at the very first June 21, 2017 hearing in the case. Appellant respectfully avers it inevitably led to controlling error of law where the court viewed all matters, erroneously, in favor of the moving party under Rule 56.

I. Abuse of Discretion leading to controlling errors of law first occur in Allendale, South Carolina arguments June 21, 2017.

The very first oral arguments in this case occurred in Allendale on June 21, 2017. There, the trial judge hears factual testimony but from one litigant alone. Respondent Mark Tinsley argued for himself around defense counsel first defending the “package deal” explained via un-sworn fact testimony to the trial court. Tinsley does so as attorney litigant and defendant. (R. p. ___ - ___). It is objected to, to no avail. (R. p. ___ 6/21/17 Tr. P. _ - at ___). Not even Tinsley’s then-lawyer can be heard - “Judge, may I *finally* (sic) be heard...”(R. p. 24 at 20). At no point after June 21, 2017 does the court hear from Hunter. Tinsley continues to defend the untenable – not having procured a contract. The necessity for advancing un-sworn contested facts to the trial judge becomes patent:

“There is no contract. I have known these two people for a long time. I didn’t know I needed to get a contract (sic). I learned a lot in this Your Honor. I didn’t know that Hunter Youmans would lie to me. Now, I do. (sic)” (R. p. 19 lines 2-5). Previous to this, defendant has exposed the trial judge’s ear to contested facts under un-sworn testimony for minutes of time on the record : *“And I’m going to give you a little bit more background, because he left out a whole lot of stuff”* (R.p. 8 lines 17 – R. p. ___ 19, line 25). Controlling error begins to culminate in the court’s analysis by trial judge comparison of the 1988 deed *as like* the 2015 deed.

The court is advised by defense memorandums that Tinsley purchased this property in *fee simple absolute*. (R. p. – defendant motion for SJ). The trial judge will never look to applicable statute or applicable case law save only that submitted by one side. Forfeiture of Hunter’s interest is sealed under the line of respected, but inapplicable, cases cited by the defense and adopted by the court to evade fact; cases “*we*” (sic) cited . . . “ (R. p. __ 10/8/18 Tr. P. __). The court will not consider Stroman, despite indicating it will consider the case before ruling. (R. p. __ 10/8/18 Tr. P. __ at ____). “[*a*]nd I am glad for you to give me a case...” Id. At p. 37 lines 5-14). The court has already looked forward to the Tinsley 2015 deed general warranty language in erroneously construing the character of the 1988 estate Martin received. “The construction of this deed that we keep referring to as 317, any *subsequent conveyance* (*sic) is a *matter of law*. It says what it says.” (R. p. 37 lines 7-11 10/8/18 Tr.). Appellant respectfully avers error has entered the trial court analysis atop of abuse of discretion. The court is viewing both deeds, incorrectly, under misapplication of common law. S.C. Code Ann. §27-5-130(c). The analysis easily enables the court to evade contested fact raised in pleadings by both litigants.

a. The trial court’s ruling is incorrect and misapplied South Carolina common law.

Contrary to the Respondents’ position that at no time was a statute argued until SCRCR Rule 59 (e) arguments in Greenwood, the 10/8/2018 record reflects differently. “I think *you got to look to the statute, and the only reason South Carolina’s legislature adopted this statute (sic)*” This argument appears as early as Allendale arguments occurring in 2018. (R. p. __ 10/8/19 Tr. P. __ at __). It appears in discussion of perpetuities, vesting arguments, and potential *forfeiture*. It is described for the court as inheritance, agreement, and/or vested right distinctly implicating contested fact. The court will not review nor apply any statute. Instead, the court assists a defendant litigant to posture construing a deed strictly at law, where no facts should apply or can be

developed. The court does so where discovery noncompliance is never ruled upon. The court does so where Plaintiff counsel has argued (a) factual vesting of inheritance rights over decades (b) where it is conceded no contract existed, and (c) were an agreement for the benefit of an enforceable by siblings existed in the 1988 deed. Moreover, settlement occurs without an executed Release signed by Hunter. It is too late for any other construction by the Court, however. The trial judge has found a way to rule at law evading contested fact. The trial judge now likens Tinsley's 2015 deed as fee simple absolute *derived from* Martin's 1988 deed within the chain of title.

It is not disputed that South Carolina common law was abrogated by statute in 1993. S.C. Code Ann. §27-5-130(c). The code section explains that the law applies only to deeds executed **after** December 31, 1993. The deed long argued here was executed on December 30, 1988, approximately five (5) years before. It is executed after South Carolina abrogates by statute the Rule Against Perpetuities, also, as argued before the court (R. p. __ 10/8/18 SJ). However, under the court's review the 1988 Deed language *equals* the 2015 deed from Martin to Tinsley, and there is no need to look to statutory authority further in this Allendale case. Appellant respectfully asserts this was error by the trial judge.

The 1988 deed was not an arm's length transaction. Rather, it is a gift as recited by the deed for \$5.00 and "*love and affection father to son*". More importantly, the deed never granted *exclusivity*, the most basic of fee simple absolute estate rights. The right to exclude. It is undisputed that Martin accepted the deed. It is undisputed Causey's three other sons were beneficiaries by use of the property Causey conveyed to Martin, expressly named in this deed. The court ignores that there is an *agreement* and an *acceptance* by Martin. The court ignores that the agreement would be for the benefit of other sons, including Hunter. The court ignores that the agreement would be enforceable by any of these intended beneficiaries, thus necessitating written, signed release.

The record below is devoid of facts showing exclusivity was ever imposed for twenty eight years of Hunter using the pond and pond house, until the court forbids Hunter further access by Order: “*And if I hear that it’s been monkeyed with, they (sic) will bring it back to me and you will have a problem. So let’s just do it straight up. Okay?*” (6/21/17 Tr. P. 46 lines 15-22). The trial judge’s words echo the un-sworn factual testimony of Tinsley, alone, from the very first hearing. The court has already begun to view Hunter as Trespasser without rights, despite Hunter having had decades of access to the property. The 8/2/2017 Order went further by Ordering that neither Hunter nor anyone on his behalf shall enter the land or property during the pendency of this action apart from the limited access permitted by the order, and further “A violation of this provision shall be punishable by *contempt. (sic)*” Hunter never violates the order, yet becomes implied trespasser under the trial judge’s 2019 subsequent Orders despite the court acknowledging “the court does not doubt” Hunter’s prior use of the property. (Rp. P. _ Order at _). Under the trial court’s reasoning, Hunter never held any equitable rights. The conclusion completely unsupported by record evidence, not the least of which was the 1988 deed. Forfeiture is about to occur under Order of the trial judge nevertheless.

Lastly, the little discovery enforced or permitted by the trial judge reflects releases are sought of *all* Youmans brothers by settlement attorney Sanders. A *signed* Release is never obtained from Hunter. (Rp. P. _). As cited by Respondent, if the 1988 deed paragraphs do not have legal effect, it simply does not matter whether Hunter signed a waiver or Release, or not. Noteworthy is that Waiver and/or Release are both inherently factual concepts at law, at minimum requiring a knowing and voluntary decision. By Hunter. However, the trial judge will effectively end any factual development through ruling at law judicially declaring invalidity of the 1988 deed language as law.

The court ignores exhibits evidencing the option to purchase was, as of September 2015, *valid* per the settlement attorney Sanders. He is the same attorney who drafted both deeds at issue on appeal. The court accepts, then disregards exhibits from the bench. (R. p. --) “*The letter you are referring to is a July 14, 2015 letter from Walter H. Sanders, Jr.; is that correct?* (Rp. P. __ 35 at 19-25). It is accepted as exhibit by the court, yet disregarded. If not valid, release(s) by Martin’s brothers Stephen, Kevin and Hunter Youmans would never need to be sought out. *Why then were their signatures doggedly pursued?* Because each held vested options of purchase by year 2015, triggered by Martin’s desire to sell to anybody other than a Youmans family member.

Hunter’s equitable rights vested whether immediately or over years of use under the wishes of the Youmans’ late father, memorialized in a long-ago deed recorded of public record (for a reason) in 1988. This deed within the chain of title binds Tinsley, unless the trial court can evade contested fact application raised by the pleadings of both parties. The trial court does so by pitching its analysis sideways as pure question of law predicated on two (2) deeds that were decades apart, and ignoring statutory abrogation of South Carolina common law.

b. Discovery pertaining to Hunter’s use, enjoyment and option to purchase that had vested over time were relevant issues of fact foreclosed by the trial court’s grant of summary judgment.

Even if Martin had the right to impose exclusivity, the record is *devoid* of any such facts or evidence, wrongly construed by the trial court most favorably to the movants under Rule 56. Summary judgement is granted where the trial judge, in favor of the movant, fails to recognize contested facts and the sheer absence of documents in the form of written offers, contracts, or executed Release by Hunter. The court ignores Hunter’s rights as heir in his father’s deed. Instead, the trial court opts to apply common law to impose *forfeiture*. The trial judge applies post-1993 common law general principle to the 1988 deed in error. Appellant avers the trial court ruling should be respectfully reversed by this court.

c. The court failed to consider S.C. Code Ann. 27-5-130 (c), misapplying common law.

“The Court did not apply any statute. The court determined Martin received fee simple absolute by examining the 2015 deed language. (R. p. 4/8/19 Order, para (5) lines 2-6). The court previously infers facts from the 2015 deed most favorably to the movant. This occurs in October 8, 2018 arguments in the record: The Court: *“Well, let me ask you this: Do you acknowledge that the deed he (sic) received was the general warranty fee simple deed?” “I’m talking about the deed that Mr. Tinsley got.”* (R. p. __ 10/8/18 Tran. P. 17 at lines 8-14). Summary Judgment should not be granted even when there is no dispute as to the evidentiary facts (here deeds), if there is a dispute as to the conclusions to be drawn therefrom. MacFarlane v. Manley, 274 S.C. 392, 264 S.E.2d 838 (1980). At this stage the court has begun to compare the deeds, in error, under misapplication of common law. Further, the court decision is made: *“I mean, quite frankly, Mr. Halford, I really it’s a question of law. I don’t think it is a matter of - - you say there’s discovery out there, there’s factual issues (sic), I don’t think there’s any factual issues. The deed says what it says from the four corners.”* (R. p. 34 lines 4-12). *“[a]ny subsequent conveyance (*sic) is a matter of law”*. (R. p. 37 lines 7-11). The court brings to bear post 1993 common law presumption under S.C. Code Ann. §27-5-130 (c), that did not exist in year 1988, and factual development is foreclosed entirely by the judge. While the trial judge observed that at common law, a grant to someone and their heirs signified a fee simple absolute (1/18/19 Or. P. 2) (citing McMichael v. McMichael, 51 S.C. 555, 557, 29 S.E. 403, (1898) generally, the court is construing a 1988 deed which evidences (a) agreement and (b) acceptance by Martin. An agreement enforceable by named beneficiaries within the deed.

d. The trial court refused to consider facts of vested option to purchase rights where no contract exists as conceded fact in the record below.

Aside from deliberate evasion of contested fact, the court's review of two deeds and ultimate ruling of law charged against Hunter's rights in family lands. Hunter is identified beneficiary with express right to use and deeded option to purchase. In order that the equitable interest transfer from Martin to Tinsley under the purported package deal, a contract would have been required. Plaintiff counsel had long argued the statute of frauds in the record below. The more important issue, however, is that Tinsley took with notice. From Martin. The brothers had disputes with one another. "*They haven't spoken in years. They can't stand each other. They won't talk.*" (6/21/17 Tr. P. __ at __). "I essentially acted as mediator" (Rp. __ 6/21/17 Tra. P. __). It is represented to this court as fact that Hunter knew of the impending package-deal purchase by Tinsley in year 2015. If true, then the purchaser (or his purported attorney) should have obtained a written contract and /or a signed Release by Hunter. It never occurs due to dispute. Neither Tinsley nor settlement attorney Sanders obtains Hunter's Release. Hence, the need to invoke the *Rule Against Perpetuities* first advanced by Defendant Tinsley and later withdrawn. It is not disputed that Martin wished to sell to Tinsley at some *undetermined* date and time in year 2015. What is disputed is that when Martin desires to sell to anyone other than a Youmans, Hunter held vested option to purchase. Unless, that is, Hunter has waived, abandoned, released, or had his rights *revoked* – all factual questions. However, by ruling at law where no underlying contract the court imposes forfeiture, necessarily, against Hunter's interest. Under Rule 56, the inference judged most favorably to the movant, wrongly, is that Martin wished to sell to Hunter. This is completely unsupported by record evidence.

e. The court erred at law by granting summary judgment where no written release by Hunter Youmans is ever obtained.

The statute of frauds is disregarded by the court. Plaintiff argued S.C. Code Ann. §32-3-10(4) before the court to no avail. Whether Hunter's interest is considered inheritance, tenement,

or hereditments, the statute makes clear that certain agreements must be in writing. And signed. This would include Release instruments as to whatever the equitable interest existed in year 2015, irrespective of its legal definition.

The fact that Hunter never signs a release prior to the 9/22/2015 settlement evidences legally and factually that Tinsley could not be the recipient of fee simple absolute estate derived from Martin. This of course is contrary to the position that "*it simply does not matter whether Hunter signed a waiver or Release*" advanced by Respondent. (Resp. Initial Brief p. 8 para 5). Noteworthy is that Waiver would be an inherently factual concept. The trial judge ignores exhibits and case law he permitted from the bench describing *validity* of the option to purchase. (R. p. __ 10/8/18 Tr. At ____). The stage for forfeiture is now set, the trial judge having received but from one litigant contested factual testimony, ultimately leading to controlling error of law. The need to evade facts becomes suggestive: "[t]here's no facts that really need to be borne out about this, is there?" "Well, yes sir, there is". (R p. __ 10/8/2018 Tr. P. 33 lines 12-22). Summary judgment should properly have been denied at this juncture, but was not. The court is construing evidence and all inferences in favor of the wrong party, the movant.

The court has viewed all evidence and inferences most favorably to the defendants on summary judgment. The 1988 estate is now like the 2015 Tinsley deed, and factual development is foreclosed despite two (2) successive motions for discovery noncompliance filed within the record. As aptly stated by Respondent counsel, the broader background is much more extensive than can be described in memorandums and briefs offered by counsel for the litigants. That is because the broader background necessarily includes facts foreclosed by the trial judge in favor of forfeiture. Such facts include Tinsley allegations of fraudulent inducement to purchase no less than three (3) tracts in package deal form where there exist not a stitch of contract. If that were not

error enough, there is also the loss of Hunter's rights where Hunter never executed a signed Release. Thus, the summary judgment ruling was not a straightforward question of law as Respondent suggests on whether language in a *singular* deed was enforceable. The broader view is whether the circuit judge erred under abuse of discretion and controlling errors of law in incorrectly determining of law the character of estate received by Martin. In 2015, Martin could only convey that which he agreed to and accepted from Causey.

CONCLUSION

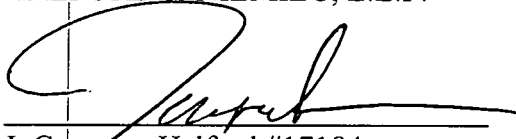
Appellant respectfully avers the trial judge erred and has imposed forfeiture in misapplying common law and evidence, even *undisputed* evidence, in the form of deeds recorded as public record. Even if the construction of a clear and unambiguous 1988 (*not a single 2015 deed) is strictly a question of law for the trial court, it is conceded fact in this case that there is and was no Martin-Tinsley contract put into writing or signed. Where a contract- *or lack thereof*- is capable of more than one construction, the question of what the parties intended become facts to be submitted to the jury, and not questions of law for the court.

The existence and enforceability of an agreement among heirs Martin and Hunter was a jury question when its existence is questioned and the evidence, or distinct lack of evidence, is conflicting or *gives rise to more than one inference*. Martin's decision to sell to anyone other than a Youmans triggered option purchase rights held by Stephen, Keven and Hunter Youmans, respectively. Otherwise, Release signatures would not be required. Hunter's rights are foreclosed by the court grant of judgment ruling at law. Hunter held vested option to purchase derived from a 1988 deed of his father, viewed wrongfully by the Court retroactively applying in the 9/22/2015 Tinsley deed general warranty verbiage as to the character of Martin's estate. Appellant respectfully avers that the deeds were not the same. Under misapplication of common law, only a forfeiture can result necessarily. Factual questions rightfully the providence of a jury are judicially

foreclosed by the judge. The key point is that the trial judge incorrectly determined the 2015 deed verbiage applicable to estate Martin received, ultimately forcing forfeiture under summary judgment.

This court should respectfully Reverse and Remand for jury trial.

HALFORD & NIEMIEC, L.L.P.



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October 10, 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

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OCT 15 2019
SC Court of Appeals

William Hunter Youmans,Appellant,

vs.

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

PROOF OF SERVICE FOR REPLY BRIEF OF APPELLANT

I hereby certify that I am the Attorney for the Appellant in the above captioned Appeal and that I did on October 10, 2019 serve by U.S. Mail and e-mail a copy of Appellant's Reply Brief upon counsel for Respondents, addressed as follows:

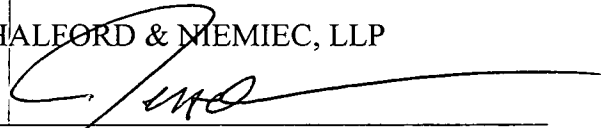
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October 10, 2019

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OCT 15 2019
SC Court of Appeals

October 10, 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 of the Appellant's Reply Brief along with an original and one copy of the Proof of Service regarding the above-referenced matter. 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 A. Hewitt, Esquire
w/enclosures
Woodrow F. Gooding, Esquire
w/enclosures
Mark B. Tinsley, Esquire
w/enclosures