

Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

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S.C. SUPREME COURT

October 27, 2021

To Whom it may Concern,

With this letter I respectfully file a petition for a review and hearing by the Supreme Court of South Carolina of my lower court case # 2012CP2900498 and the decision made by the South Carolina Court of Appeals on September 29, 2021;

To Reverse their decision, to determine that there was a CONTRACT secured by a mortgage that would provide a 10 year statute, Section 15-3-520(a) and a 20 year statute, Section 15-3-520.

1. Here is Judge Haye's statement in his Order, p. 86 & 87.

2. Here is the POSITIVE EVIDENCE of the CONTRACT secured by a mortgage, Exhibit 4, p. 79, 80, 82, 65 & 66.

3. Here is Judge Haye's quote on Statute 15-3-520(a), "the focus of 15-3-520(a) is not a mortgage but rather a written contract that is secured by a mortgage," again on page 86.

I was denied by the Court of Appeals to have my case heard because I represented myself or maybe because of COVID 19, however, the South Carolina Court of Appeals missed the point, there was a CONTRACT in my case and the court dismissed that fact.

Sincerely, Mark Wilson

based entirely upon the alleged acts or omissions of Jayma as a partner in the men's business venture, and includes specific causes of action for breach of fiduciary duty and fraud. Our Court of Appeals has held that each of those causes of action is subject to a three-year statute of limitations. Mazloom v. Mazloom, 382 S.C. 307, 675 S.E.2d 746 (Ct. App. 2009)(breach of fiduciary duty); Turner v. Millman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009)(fraud).

In opposition to Jayma's motion, Wilson argues that his claims are not subject to the three-year statute of limitations of § 15-3-530. Instead, Wilson argues that his claims are subject either to the twenty-year statute of limitations of § 15-3-520 (actions upon a sealed instrument, bond or other contract in writing secured by a mortgage of real property) or to the ten-year statute of limitations set forth in § 15-3-340 (action by an individual for recovery of real property). I disagree.

Section 15-3-520(b) (action on a sealed instrument) is plainly inapplicable to this case. In making this determination, the court need look no further than the definition of "sealed instrument" set forth in Lyons v. Fidelity Nat'l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015). In Lyons, the Court of Appeals defined a sealed instrument as "an instrument in which the *bound party* has affixed a personal seal, recognized as providing indisputable evidence of the validity of the underlying obligations." Id. at 125, 781 S.E.2d at 131-32 (emphasis added). In this case, neither the deed to the Disputed Tract nor the mortgage covering the Disputed Tract was signed or "sealed" by Jayma. Jayma is not the "bound party" of either instrument, and Wilson's claims against Jayma are not "an action on a sealed instrument."

Nor do Wilson's claims fall within § 15-3-520(a), as an action on a "bond or other contract in writing secured by a mortgage of real property." The focus of § 15-3-520(a) is not a mortgage, but rather a written contract that is secured by a mortgage. There is no evidence that

JH #5
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Jayma signed any "written contract secured by a mortgage" and Wilson's complaint does not allege that he seeks to enforce any such contract.

Wilson's claims also are not governed by the ten year statute of limitations set forth in § 15-3-340. Our Supreme Court has specifically held that an action to set aside a deed on the basis of fraud is not an "action for the recovery of real property." McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953). Such claims are, instead, an "action for relief on the ground of fraud," and subject to the "general" statute of limitations - a six-year limitations period when McKinnon was decided. That limitations period has since been reduced to three years, and is now codified as § 15-3-530(7)(Law. Co-op. 2005). Reviewing Wilson's complaint, as McKinnon instructs, the court notes that Wilson alleges Jayma obtained title to the Disputed Tract through a fraudulent deed. Wilson's action to set aside that deed is, therefore, subject to a three-year statute of limitations and not the ten-year statute of §15-3-340.

B. The undisputed factual record establishes that Wilson did not commence This action within three years of the accrual of his claims, and his entire Complaint is subject to dismissal as a matter of law.

The question of when a claim accrues for purposes of calculating the statute of limitations is generally a question of fact. The statute begins to run when "the underlying cause of action reasonably ought to have been discovered." Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011). When there is conflicting evidence as to whether a claim has accrued for purposes of the statute of limitations, the issue must be submitted to a jury. When the evidence is conclusive, the question may be decided as a matter of law.

In this case, there is no material issue of fact in dispute as to the accrual of Wilson's claims. The undisputed evidence conclusively establishes that Wilson had knowledge of facts


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4 *Wilson*
EXHIBIT
Huseby
GLOBAL LITIGATION SUPPORT
83 YEARS OF
EXCELLENCE
7-7-17

CONTRACT FOR RESIDENTIAL CONSTRUCTION

AGREEMENT

Made as of the 24th day of August, 2005.

BETWEEN the OWNER: Keith Jayna
9817 Pallisers Terrace
Charlotte, NC 28210

And the CONTRACTOR: F. Mark Wilson Construction
7602 Gus Eubanks Rd.
Monroe, NC 28112
Unlimited N.C. License #26620
Unlimited S.C. License #9794

The Project location: LOT 165 on Strike the Gold in Providence Downs South.

P.A.

ARTICLE IV

CONTRACT AMOUNT

The Contract Amount for the Work described in Exhibits A & B is the actual cost to complete which is estimated to be \$822,625.00

ARTICLE V

DEPOSIT AMOUNT

The deposit amount shall be \$1,000,000. This amount is due and payable upon execution of this contract as witnessed by the signature here within.

ARTICLE VI

CHANGE ORDERS

The CONTRACTOR agrees to work closely with the OWNER to target the amount reflected on the ESTIMATE GUIDE. The OWNER and CONTRACTOR shall meet regularly to evaluate the status of work relative to the ESTIMATED BUDGET. Additionally, during the regular meetings, any change the OWNER would like to make to the project will be discussed.

There shall be no CHANGES or ADDITIONS to the Work as described in the CONTRACT DOCUMENTS, except those in the form of written change orders which have been signed by both the OWNER and the CONTRACTOR, as well as setting out the additional charge or credit to the OWNER, as well as additional time for the CONTRACTOR to comply with the change order.

ARTICLE VII

PAYMENT SCHEDULE

The CONTRACTOR shall submit to the OWNER a JOB COST LEDGER. Attached to these Reports will be copies of the actual invoices for which payment has been requested

The CONTRACTOR shall receive payment for WORK IN PROGRESS as the work progresses.

ARTICLE VIII

OTHER PROVISIONS

This AGREEMENT BETWEEN OWNER AND CONTRACTOR shall be governed by the laws of the State of North Carolina.

The OWNER or his or her agent may enter and inspect the Work for the purpose of determining whether the WORK performed or being performed conforms with the CONTRACT DOCUMENTS.

If the CONTRACTOR voluntarily or involuntarily goes into bankruptcy or receivership, or if the CONTRACTOR fails to make any significant progress on the WORK for a period of 30 days, after commencement of the WORK, then in any of these events, the OWNER may, after seven (7) days written notice, direct the CONTRACTOR to cease work. Adverse weather as described in Article III is specifically excluded from counting against the 30 day period above referenced. Upon such default, in addition to any other remedies the OWNER may have, the OWNER may retain another party or parties to complete the WORK in accordance with the CONTRACT DOCUMENTS and make payments to such parties as provided for in the CONTRACT DOCUMENTS with respect to the CONTRACTOR.

AGREEMENT BETWEEN OWNER AND CONTRACTOR, or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in affect.

Each provision of this AGREEMENT BETWEEN OWNER AND CONTRACTOR is separate from every other provision contained here within, and if any provision is determined to be unenforceable or is revised, it will not affect the enforceability or validity of any other provision.

This agreement entered into as of the day and year first written above.

OWNER (S)

 (seal)

CONTRACTOR

F. Mark Wilson (seal)
F. Mark Wilson Construction

_____ (seal)

SECOND COUNTERCLAIM

**BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR
ALTERNATIVELY BREACH OF CONTRACT
(RESIDENTIAL CONSTRUCTION CONTRACT)**

107. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

108. Wilson, as contractor, entered into a residential construction contract with Jayma upon the terms and representations described above.

109. Wilson has breached the terms of that contract as described above and is in default.

110. Wilson's breaches of the residential construction contract were accompanied by one or more fraudulent acts, including but not limited to:

- a. arranging for and obtaining a refund or kickback on the purchase price charged to Jayma for the lot which was not disclosed to Jayma at the time Jayma entered into the residential construction contract and was not disclosed to the lender at the time Wilson submitted construction estimates to the lender to support the loan;
- b. advancing himself more than the contractually agreed upon Contractor's fee without prompt and full disclosure, consent or agreement; and
- c. personally drawing a substantially larger sum for his personal use from funds/accounts set aside for completion of the home than he represented he would draw or disclosed that he had withdrawn at the time he withdrew the funds.

111. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and attorney's fees in addition to compensatory damages.

112. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of unauthorized or improper expenditures and draws, additional costs for completing the home, the additional interest costs on the mortgage on the new home for the extra time it took to complete the home, the personal draws in excess of \$5,500, the principal and interest incurred on the line of credit, the harm to Jayma's valuable credit reputation, and the loss on the sale of the home.

113. Wilson's obligations and liability to Jayma on the residential construction contract are secured by the above described mortgage which provides for the recovery of attorney's fees.

THIRD COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (LINE OF CREDIT)

114. Jayma re-alleges the preceding paragraphs of the Counterclaims as in again fully restated.

115. Wilson entered into a contract with Jayma regarding the use of the funds from the \$194,000 line of credit by which he was granted the authority to make draws against the line of credit strictly for legitimate cost overruns in completing the home and no more than \$50,000 for his personal use.

116. Wilson has breached the terms of that contract as described above and is in default.

117. Wilson's breach of this contract was accompanied by one or more fraudulent acts including personally drawing more than \$50,000 for his personal use and

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Mark Wilson, Appellant,

v.

Keith Jayma, Respondent.

Appellate Case No. 2017-002223

Appeal From Lancaster County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2021-UP-343
Submitted March 1, 2021 – Filed September 29, 2021

AFFIRMED

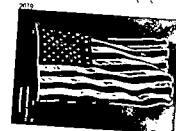
Mark Wilson, of Indian Trail, North Carolina, pro se.

Walter Keith Martens, of Hamilton Martens, LLC, of
Rock Hill, for Respondent.

PER CURIAM: Mark Wilson appeals the circuit court's grant of summary judgment to Keith Jayma. We affirm.¹

~~We decide this case without oral argument~~ pursuant to Rule 215, SCACR.

Mark Wilson
2506 Kings Farm Way
Indian Trail, N.C. 28079



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