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. 2019-000736

William Hunter Youmans, APPELLANT

vs.

Mark B. Tinsley and Diane E.Tinsley, RESPONDENTS

MEMORANDUM IN SUPPORT OF REHEARING AND RECONSIDERATION

The December 15, 2021 Order of this court affirms a ruling at law by the circuit judge that on December 30, 1988 the Youmans' father Calvin conveyed to son Martin a grant of fee simple absolute. Appellant further asserts the court erroneously finds that neither party argued applicability of statute §27-5-130(c) before the circuit court. Appellant respectfully requests reconsideration on applicability of the statute not applied by the court as argued before the circuit judge March 27, 2019. (R.p. 362) and appellant seeks reconsideration of the ruling of law that the deed from Calvin to Martin granted fee simple capable of being passed from Martin to Tinsley in year 2015.

1. S.C. Code Ann. 27-5-130(c) .

This statute was argued as applicable before the Circuit Judge. The circuit judge did not apply the statute. The court of appeals has ruled that neither party argued the statute's applicability finding the circuit judge did not apply the statute in its ruling of law. Appellant respectfully seeks reconsideration where the appeals court has affirmed circuit court ruling which retroactively applied post 1993 presumptions to a deed executed December 30, 1988. Appellant respectfully asserts the deed contained option to purchase, not first right of refusal described by the order in this case. The option agreement terms were accepted by Martin. If it were a stand-alone contract provision it would be enforceable at law. The South Carolina Supreme Court has held that a deed's language would be an enforceable contract where it were executed as a stand-alone contract and thus be no less enforceable because the parties included it in a deed. Stroman v. South Carolina Power Co., 168 S.C. 538 (1933). ("[*in a deed, agreement that grantee would sell property to named persons on happening of certain contingency held not void as attempt to limit fee simple estate*"). This case has never been reversed, and Appellant respectfully asserts for reconsideration that the court's decision is in conflict with the Stroman decision of the Supreme Court in South Carolina .

2. Option to Purchase right vs. First Right of Refusal.

Appellant respectfully seeks reconsideration of the courts' order determining that the brothers' rights as a *first right of refusal* vs. an option to purchase. The agreement was denoted and accepted by Martin within the four corners of the 1988 deed. The option

within the deed was intended for the benefit of Calvin's other sons who would be intended third party beneficiaries of the Calvin-Martin covenant withing the instrument.

A first right of refusal would constitute an unreasonable limitation on the ability to alienate prohibited by the laws of this state. By contrast, an option to purchase as accepted by Martin, would not be. The deed denotes an accepted agreement, supported by consideration, expressly citing Calvin's other sons with option to purchase upon happening of a certain contingency; that being should Martin desire to sell or otherwise convey the property.

Martin accepted the terms of the agreement, even if memorialized inside of a deed as the legal instrument. The intended beneficiaries were Martin's siblings; the three (3) other sons of Calvin Youmans. Appellant respectfully asserts the four corners of the deed evidence option to purchase, not first right of refusal. It evidences Calvin's intent that the property remain within the ranks of the Youmans family. The option to purchase was created by an attorney for Calvin, along with four (4) similar deeds containing reciprocal language. (R. p. 126). There is but one of the December 30, 1988 deeds in the record on appeal before the court, however. Appellant respectfully seeks reconsideration by the court upon the 2015 Martin deed to Tinsley purportedly granting fee simple where the December 30, 1988 Calvin to Martin deed within the chain of title vested the other brothers with option to purchase, and not a first right of refusal.

3. Stroman v. South Carolina Power Co., 168 S.C. 538, 541, 167 S.E.2d 844, 845 (1933).

Appellant respectfully asserts the decision of the Court of Appeals is in conflict with the Stroman Supreme Court decision. In year 1988, the December 30 conveyance from Calvin to Martin granted the other three Youmans brothers option rights, but not a

restriction or unreasonable limitation upon Martin's ability to sell, alienate and/or exclude. The court will note the conveyance(s) were not arm's length purchase transactions as denoted by the consideration. (R. p. 125). Rather, it was a inter vivos transfer from father to son. It contained contractual agreement within the deed accepted by the grantee. The consideration was for *Five and no/100 –and love and affection.* (R. p. 125). The agreement having been accepted by Martin was option to purchase by Calvin's other sons upon happening of a certain contingency. (R.p. 318.). It is an option to purchase properly described as such by the attorney author who created the instrument as Option to Purchase, and not a First Right of Refusal restriction or limitation on alienability. (R. p. 631-632) The inconsistent tenement of fee simple – the right to exclude others as referenced by the court -was never granted to Martin by his father. It is never exercised by Martin against his brother. It is, however, first exercised by Mark Tinsley under purported grant of fee simple from Martin to Tinsley in year 2015. (R.p. 124). Moreover, at no time was a Release secured from Hunter Youmans (R. p. 566) enabling fee simple estate to vest in Tinsley. Appellant respectfully seeks re-hearing and reconsideration of these matters by the court of appeals and that the court vacate and reverse.

Respectfully submitted,

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PROOF OF SERVICE
APPELLATE PETITION FOR REHEARING
AND RECONSIDERATION

Appellant counsel here certifies that on January 14, 2022 that a copy of the Notice of Motion and Motion for re-instatement and reconsideration was with memorandum in support of same served upon the below listed counsel of record by electronic delivery and U.S. Mail, postage prepaid and addressed as follows:

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Respectfully submitted,

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January 14, 2022

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January 14, 2022

Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street,
Columbia, South Carolina 29201

Re: Appellate Case No. 2019-000736
Appellant Motion for Reconsideration

Dear Clerks Offices:

Please find enclosed for filing the original and six copies of the motion for reconsideration being filed by appellant in the above captioned case along with our proof of service, filing fee and return envelope.

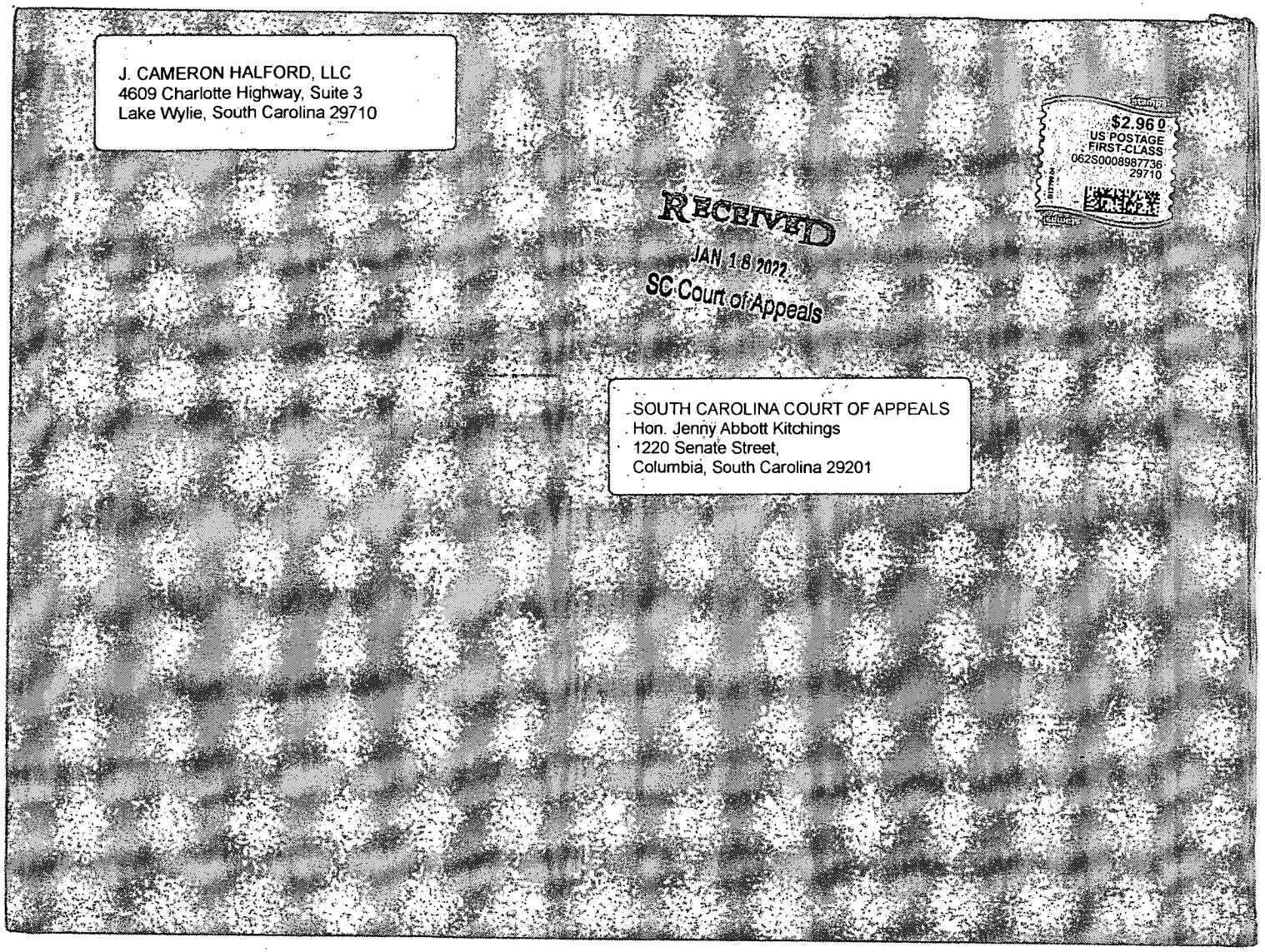
Please return a clocked copy of the petition once filed. Thank you for your assistance.

With regards, I am

Sincerely,

J. Cameron Halford

JCH;drl
Enclosure/attachments
cc: Mark Brandon Tinsley, Esq. / Woodrow Gooding, Esq.
w/enclosures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