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Property--Construing the Deed in South Carolina

Carl G. Ferguson

PROPERTY—CONSTRUING THE DEED IN SOUTH CAROLINA*

I. Applying the Rules of Law

A. Facts and Contentions

In *Stylecraft, Inc. v. Thomas*[1] the South Carolina Supreme Court was asked to determine the quantum of estate conveyed by a deed set out in part as follows:

> I, T. C. Hammond in the State aforesaid, Aiken County, in consideration of the sum of Eighty & no/100 Dollars to be paid by Tom McCain, James Smith, & William Hammond as Trustees of Carys Hill School in the State aforesaid Edgefield County have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Tom McCain, James Smith and William Hammond, their successors and assigns, All that lot or parcel of land in the State & County above named containing Four (4) acres and bounded East, North & West by lands of the Grantor (T. C. Hammond) and South by lands of H. W. McKie.
>
> It is specifically understood and agreed by all parties that the land is to be used for school purposes only—should it ever be used for other purposes the said property is to be revert [sic] to him the said T. C. Hammond or his heirs and assigns forever.
>
> . . . .
>
> TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Tom McCain, James Smith and William Hammond, their successors and assigns forever.[2]

The plaintiff claimed ownership through successive conveyances from the above named grantees, and the defendant claimed title through successive assignments of the reversionary interest. The parties stipulated that the land had ceased to be used for school purposes.

* Stylecraft, Inc. v. Thomas, 250 S.C. 495, 159 S.E.2d 46 (1968).

1. 250 S.C. 495, 159 S.E.2d 46 (1968).
2. *Id.*

The plaintiff contended that the above named grantees took an estate in fee simple absolute. The plaintiff advanced the rule of property that once a fee simple absolute is created it cannot be cut down by subsequent words in the deed; therefore the original grantor's condition was void. Furthermore, the plaintiff maintained that even if the condition were valid, the defendant would have no interest in the land because of the rule that a possibility of reverter is an interest too nebulous to be transferred. The plaintiff pointed out that the defendant claimed title through successive assignments of the reversionary interest and not as an heir of the original grantor.[3]

The defendant contended that the original grantor's expressed condition should be given effect. He argued that the deed created a fee simple determinable. Conceding that a grant in fee simple cannot be cut down by superadded words, the defendant argued that the rule applies to a fee simple determinable as well as to a fee simple absolute.[4]

B. The Court Interpretation: The Legal Deed Approach

Affirming a circuit court decree, adjudging the plaintiff in *Stylecraft* to be owner in fee simple absolute, the South Carolina Supreme Court held that when the granting clause purports to convey title in fee simple absolute, that estate may not be cut down by subsequent words in the instrument.

The court said that this rule of law had been violated and, the grantor's expressed condition of defeasance was thereby defeated. This rule, which will be examined later, was predicated upon the court's assumption that a fee simple absolute was in fact created.

The court, in making this assumption, implied that the deed complied with another rule of law—that the technical words of inheritance are required to transfer a fee simple interest in real property.[5] There are exceptions,[6] but an inter vivos conveyance

3. This argument is not conclusive of the issue. If the deed created a fee simple determinable, the possibility of reverter left in the grantor or his heirs would automatically become a present estate in possession on the occurrence of the event specified in the instrument. C. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 98 (1962). While not shown in the record, it is possible that the assignment was made by the grantor or his then living heirs after the land had ceased to be used for school purposes. If so, defendant would have good title to the land.

4. Although this point is well taken, defendant only begs the question of whether a fee simple absolute can be cut down by a fee simple determinable.

5. Means, *Words of Inheritance in Deeds of Land in South Carolina: A Title Examiner's Guide,* 5 S.C.L.Q. 313 (1953).

6. *Id.*

of an exclusively legal interest, to named individuals,[7] has heretofore come within the operation of the rule.[8] The grantor was acting in his own right as owner of the land, and, according to the court, the persons named as grantees acquired title for their own personal use.

There were no words of inheritance, however, in the disputed deed. The grant was to McCain, Smith and Hammond, "their successors and assigns." Thus, it would seem that some lesser estate was created. It is generally held that such a grantee would take a life estate.[9] Since the conditional limitation would not have been inconsistent with a life estate by implication,[10] the deed would appear to create, in spite of the court's assumption, a determinable life estate.[11]

C. The Case for a Trust Deed Construction.

The South Carolina Supreme Court once stated that an instrument "in form and substance an ordinary trust deed conveying real estate in trust . . . must be construed as such."[12] This point should have been raised in *Stylecraft*. Although not considered, expressly at least, by the litigants or the court, there is good reason to believe that the instrument was in fact a trust deed.

Immediately preceding the granting clause, the grantees are named and identified as "Trustees of Carys Hill School." While such a designation does not conclusively evidence a trust,[13] it is generally a factor to be considered in the interpretation of any instrument.[14] In *Stylecraft* the only facts presented were the

7. The word "individuals" is used to denote natural persons. On the question of whether words of inheritance are required to transfer a fee simple to a corporation, the South Carolina Supreme Court recently said that it was not necessarily the law that words of *succession* were not needed. Southern Ry. v. Smoak, 243 S.C. 331, 133 S.E.2d 806 (1963). Thus, it would be wise, if not necessary, to include words of succession (if not words of inheritance) in a grant of fee simple to a corporation.

8. *See* McMichael v. McMichael, 51 S.C. 555, 29 S.E. 403 (1898).

9. Grainger v. Hamilton, 228 S.C. 318, 90 S.E.2d 209 (1955); Atlantic Coast Lumber Corp. v. Langston Lumber Co., 128 S.C. 7, 122 S.E. 395 (1911); McMillan v. Hughes, 88 S.C. 296, 70 S.E. 804 (1911); Sullivan v. Moore, 84 S.C. 426, 65 S.E. 108 (1910).

10. Wilson v. Poston, 129 S.C. 345, 123 S.E. 849 (1924).

11. The reversion following a life estate is freely alienable. C. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 95 (1962). Thus, defendant could have acquired good title through assignment irrespective of the condition of defeasance.

12. Steele v. Smith, 84 S.C. 464, 468, 66 S.E. 200, 201 (1909).

13. Morsman v. Commissioner, 90 F.2d 18 (8th Cir. 1937); Union Guardian Trust Co. v. Nichols, 311 Mich. 107, 18 N.W.2d 383 (1945).

14. *See* Bank of Charleston v. Dowling, 52 S.C. 345, 29 S.E. 788 (1897). The court held that while the words "to and upon the trust" indicated an

deed itself and the stipulation that the land had ceased to be used for school purposes. But it is quite conceivable that the grantees were in fact trustees of the Carys Hill School and that they took title to the property in that capacity.

If the school were an unincorporated association the property would quite naturally have been transferred to trustees. Such an organization is not a legal entity and therefore cannot take or hold title to property.[15] It can, however, be a beneficiary under a trust.[16] If incorporated, it is reasonable to assume that the school had trustees who, in turn, had certain duties with respect to the maintenance and control of the school's property.[17] Either theory is consistent with the fact that the named grantees paid the consideration and were the subsequent transferors of the property.

If the identification of the grantees "as trustees" did in fact signify the existence of a trust, the court's construction of the deed could have been different.[18] In its equity jurisdiction over trusts a court is not bound by the technical rules of the common law and will seek the intention of the grantor from the whole instrument.[19] The grantor's manifest intent was to create a defeasible fee simple. The court could so construe the deed because (1) technical words of inheritance are not required to transfer a fee simple interest under a trust deed, [20] and (2) the court would not be bound by the common law rule which would otherwise defeat this expressed intent.

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intent to create a trust, it was overridden by the conferral of an absolute power of disposal without accountability on the purported trustee.

15. MacGregor v. Commissioner of Corps. & Taxation, 337 Mass. 484, 99 N.E.2d 468 (1951) (the common law rule); *see* Shields v. Jolly, 1 Rich. Eq. 99 (S.C. 1844). The members of the association will take title in their individual capacity. The court suggested that if there were so many members as to make this impractical, some of the members could hold title as trustees for the association.

16. Krall v. Light, 240 Mo. App. 480, 210 S.W.2d 739 (1948).

17. The imposition of such duties would make the trust active and the Statute of Uses would not execute the use. Thus, legal title would remain in the trustees. Foster v. Glover, 46 S.C. 522, 24 S.E. 370 (1896).

18. The fact that the words of trust did not appear in the grant is of no consequence. McCown v. King, 23 S.C. 232 (1885). The court imposed a trust on a grantee who would have otherwise taken a legal fee simple for his own use even though the words of trust appeared only in the warranty clause. The court said that it is legitimate to transpose the clauses in order to give effect to each part of the deed.

19. Bartlett v. Aycock, 109 S.C. 436, 95 S.E. 188 (1918).

20. Hogg v. Clemmons, 126 S.C. 469, 120 S.E. 96 (1923); McMichael v. McMichael, 51 S.C. 555, 29 S.E. 403 (1898).

II. THE RULE OF LAW THAT A GRANT IN FEE SIMPLE ABSOLUTE MAY NOT BE CUT DOWN AND THE DEFEASIBLE ESTATES

The rule rests upon the proposition that

> [a]n estate in fee simple is the entire and absolute property of the subject, and therefore, when one grants such an estate he can make no further disposition of the property for he has already granted the whole and entire interest that it is possible for him to have.[21]

It is also a product of the old common law maxim that a deed should be construed most strongly against the grantor.[22] Moreover, the rule seems to be as tantamount to the rule of construction that when there are two incompatible clauses in a deed, the first will prevail over the latter.[23]

Since the rule was applied in *Stylecraft* to defeat an expressed condition,[24] the court could have realistically labeled it a rule of policy to prevent the entailing of land titles. The rule may consistently be seen as an adjunct of the South Carolina Supreme

21. Keels v. Crosswell, 180 S.C. 63, 65, 185 S.E. 39, 40 (1936).

22. Edwards v. Edwards, 2 Strob. Eq. 101 (S.C. 1848).

23. First Carolinas Joint Stock Land Bank v. Ford, 177 S.C. 40, 180 S.E. 562 (1935); Crawford v. Atlantic Coast Lumber Co., 79 S.C. 166, 60 S.E. 445 (1908). Rules of construction, however, were designed—theoretically at least—to reach, not defeat the grantor's intention. *See* Rhodes v. Black, 170 S.C. 193, 170 S.E. 158 (1933). They are rebuttable by clearly expressed intent. *See* Rogers v. Rogers, 221 S.C. 360, 70 S.E.2d 637 (1952) (constructional rules subservient to the overall intent expressed in the instrument); Pope v. Patterson, 78 S.C. 334, 58 S.E. 945 (1907). Where "the intention of the parties can be plainly ascertained, arbitrary rules are not to be resorted to." *Id.* at 339-40, 58 S.E. at 947, *quoting from* 2 R. DEVLIN, A TREATISE ON THE LAW OF DEEDS § 836 (no date available).

24. *See also* Shealy v. Shealy, 120 S.C. 276, 113 S.E. 131 (1922) (held that a grant to *A*, his heirs, and assigns forever, subject to the covenant, conditions, terms, and limitations hereinafter set forth, conveyed a fee simple absolute); Keels v. Crosswell, 180 S.C. 63, 185 S.E. 39 (1936) (held grant to *A*, his heirs, and assigns forever, but if he dies without heirs of his own body, the land shall revert to my own estate, conveyed a fee simple absolute). The rule has been applied in cases in which the grantor apparently attempted to limit a grant of a fee simple conditional to a life estate. Hewitt v. Hewitt, 187 S.C. 86, 196 S.E. 541 (1938); Antley v. Antley, 132 S.C. 306, 128 S.E. 31 (1925). The rule was previously applied to strike down attempted reservations in favor of grantor and spouse. *See* Glenn v. Jamison, 48 S.C. 316, 26 S.E. 677 (1897) (limitation over in favor of third party also held void). But more recently these reservations have been held valid. Glasgow v. Glasgow, 221 S.C. 322, 70 S.E.2d 432 (1952). Cases holding opposite were distinguished in the following manner: "The facts of each of them were quite different from that of the comparatively simple deed which is now under construction. They were concerned with attempted limitations or *conditions* upon the estates granted, not reservations or exceptions from the grants, as here." *Id.* at 326, 70 S.E.2d at 433.

Court's abhorrence of forfeitures[25] and the court's resultant policy of construing conditions subsequent most strictly against the grantor.[26] Viewed from this perspective the rule may be reconciled with the fact that both the fee simple subject to a condition subsequent[27] and the fee simple determinable[28] are recognized in South Carolina. Moreover, there is no inherent incompatibility between this rule and the defeasible fees. As the South Carolina Supreme Court acknowledged at an early date, "he that hath a fee simple conditional or qualified, hath as ample and great an estate as he that hath a fee simple absolute . . . ."[29]

It has been held that the fee simple conditional, like the fee simple absolute, cannot be limited by superadded words.[30] Thus, the susceptibility of the other defeasible fees to this rule seems to be directly related to the grantor's form of expressed intent. Unlike the fee simple conditional in which the words of purchase are peculiar to that estate,[31] these defeasible fees are created by a grant in fee simple absolute and words of condition.[32] Aside from the rules of construction concerning the priorities of clauses in a deed,[33] *Stylecraft* implies that the conditional words must appear in the same clause as the grant of the fee, and should be closely connected therewith.[34] In fact, to avoid this rule, it might be wise to insert the words of defeas-

25. Chavis v. Chavis, 57 S.C. 173, 35 S.E. 507 (1899).
26. Rhodes v. Black, 170 S.C. 193, 170 S.E. 158 (1933); McManaway v. Clapp, 150 S.C. 249, 148 S.E. 18 (1928).
27. White v. Britton, 75 S.C. 428, 56 S.E. 232 (1906); First Presbyterian Church v. Elliot, 65 S.C. 251, 43 S.E. 674 (1903).
28. First Baptist Church v. Turner, 248 S.C. 71, 149 S.E.2d 45 (1966); Purvis v. McElveen, 234 S.C. 94, 106 S.E.2d 913 (1959).
29. Adams v. Chaplin, 1 Hill Eq. 265, 270 (S.C. 1833) (quoting Lord Coke), *quoted in* Adams v. Verner, 102 S.C. 7, 18, 86 S.E. 211, 215 (1915).
30. Sims v. Clayton, 193 S.C. 98, 7 S.E.2d 724 (1940); Antley v. Antley, 132 S.C. 306, 128 S.E. 31 (1925).
31. Adams v. Chaplin, 1 Hill Eq. 265 (S.C. 1833). It was contended that a limitation in form to *A* and his heirs, but if he die without issue, over, created a fee simple conditional. Holding that *A* took a fee simple absolute, the court said that in no case shall a fee simple conditional be raised by implication. Moreover, under the common law it would take the words "heirs of the body." *Contra,* United States v. 15,883.55 Acres of Land, 54 F. Supp. 849 (W.D.S.C. 1944) (no particular form of words are necessary).
32. *See* C. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 35-36 (1962).
33. *See* Note, *The Effect of a Conflict Between the Granting and Habendum Clauses in Deeds in South Carolina,* 10 S.C.L.Q. 431 (1958).
34. This would avoid any question of whether or not the condition is in fact in the same clause as, and part of, the grant. *See* Shealy v. Shealy, 120 S.C. 276, 113 S.E. 131 (1922).

ance immediately before the grantee is named so that the grant itself would be conditional.[35] Of course, the reversionary interest should be expressly excepted.[36]

III. CONCLUSION

As evidenced by *Stylecraft*, clearly expressed intent is not always sufficient to insure the desired disposition of real property. The manifestation of intent must conform to the requirements of law. *Stylecraft* presents two extremes: a relaxation of one requirement and a stringent application of another. The case provides authority sub silentio for the proposition that the technical words of inheritance are not required to convey a fee simple absolute if other words of similar import are used. But *Stylecraft* is probably more properly viewed as an expression of the South Carolina Supreme Court's disfavor with conditions of defeasance. The court used a questionable rule of law to defeat the attempted creation of an estate which is embraced within and respected by the rule. While the court's approach might accord with good public policy, it does pose practical problems to the grantor who wants to create a defeasible fee. Moreover, such a precedent may very well imperil presently vested rights—rights which heretofore have been accorded great consideration with respect to the operation of the rules of law.[37] Since the defeasible fees are in fact recognized in South Carolina, *Stylecraft* and the rule employed therein should have no precedential value in the construction of similar instruments.

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35. The idea of inserting the condition before creating the fee may be somewhat unorthodox. But it appears to be the reasoning employed in an earlier case in which the condition appeared in the granting clause and the fee was created in the habendum. The court gave effect to the condition and held that the deed created a defeasible fee. Wilson v. Poston, 129 S.C. 345, 123 S.E. 849 (1924). And the rule speaks only of limitations following the grant of the fee.

36. Columbia Ry., Gas & Elec. Co. v. South Carolina, 261 U.S. 236 (1923). Courts will always attempt to construe clauses in a deed as covenants rather than conditions.

37. *See* Sullivan v. Moore, 84 S.C. 426, 65 S.E. 108 (1910). The court explains why it must follow the common law rule requiring words of inheritance to convey a fee simple.

> The rule serves generally as a snare to those unlearned in technical law, and it would be difficult to suggest any reason for its continued existence; but it has been so long established in this State that the Courts can not now overrule the cases laying it down without imperilling vested rights.

Id. at 428, 65 S.E. at 108.