THE STATE OF SOUTH CAROLINA
In The Court of Appeals

William Loflin and Leslie Loflin, Appellants,

v.

BMP Development, LP, Balsam Mountain Group, LLC, Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago Title Insurance Company, and Counsellor Title Agency, Inc., Defendants,

Of which Chicago Title Insurance Company is the Respondent.

Appellate Case No. 2016-001840

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 5633
Heard January 16, 2019 – Filed March 27, 2019

REVERSED AND REMANDED

Daniel A. Speights and Algernon Gibson Solomons, III, both of Speights & Solomons, LLC, of Hampton, for Appellants.

George Hamlin O'Kelley, III, of Buist, Byars & Taylor, LLC, of Mt. Pleasant, for Respondent.

GEATHERS, J.: In this property dispute, Appellants William and Leslie Loflin challenge the circuit court's order granting summary judgment to Respondent Chicago Title Insurance Company (Chicago Title) on Appellants' breach of contract claim against Chicago Title. Appellants argue the circuit court erred by (1) concluding that the coverage of the title insurance policy issued by Chicago Title (the Policy) was limited to defects of record; (2) finding there were no defects in Appellants' title when the Policy was issued; and (3) concluding that their breach of contract claim against Chicago Title was barred by the statute of limitations. We reverse and remand for a trial on the merits.

FACTS/PROCEDURAL HISTORY

On September 26, 2000, Appellants purchased an interest in Defendant BMP Development, LP (Balsam), f/k/a Balsam Mountain Preserve, Limited Partnership, which was formed for the purpose of developing Balsam Mountain Preserve as a residential community in Jackson County, North Carolina.[1] Balsam Mountain Company, LLC served as the general partner, and Appellants were two of several limited partners. Although Balsam was a foreign entity, its promoter, Chaffin/Light Associates, had its principal place of business in Beaufort County and was doing business in Beaufort County "and throughout South Carolina." Chaffin/Light had previously formed and managed three developments in Beaufort County, i.e., Spring Island, Callawassie, and Chechessee Creek Club, and, through Balsam Mountain Preserve, sought to replicate Spring Island "on higher ground."

Balsam arranged for each "Founding Limited Partner" to enter into a Reservation Agreement to acquire the right to select and purchase a lot, a/k/a Homestead, in the development. Appellants entered into their Reservation Agreement on October 19, 2001, acquiring the right to purchase Balsam Mountain Preserve Homestead Number 108 (Lot 108), which was located on a mountainside in Phase I of the development. At that time, Lot 108 was not staked, but Balsam advised Appellants that the lot was approximately 1.9 acres and was circumnavigated by Balsam Mountain Preserve Road (Preserve Road).

On February 15, 2002, Appellants purchased Lot 108 for $495,000. On February 19, 2002, Chicago Title issued the Policy to insure Appellants' title to Lot 108, described in the Policy as "containing 1.837 acres, as shown on that certain plat

[1] Appellants paid $350,000 for their limited partnership interest.

dated the 10th day of December, 2001, prepared by Herron Land Surveying, certified by James Randy Herron, Professional Land Surveyor (N.C. #3202), and recorded in the Jackson County Records in Plat Cabinet 11 at Slide 383."[2] According to Appellants, the December 10, 2001 plat indicated Lot 108 was 1.837 acres and represented Preserve Road as circumnavigating the lot, and the recorded deed to Lot 108 incorporated this plat.[3]

In 2006, Balsam's President and CEO, Craig Lehman, advised Appellants that the size of Lot 108 was merely 1.4 acres and that Preserve Road traversed the property rather than circumnavigating it. At that time, Lehman was not aware that there was a second, unrecorded plat of Lot 108 reflecting the features described by Lehman or that the plat was prepared before the 2002 closing on the lot.[4] Appellants believed from their discussions with Balsam that the second plat had been prepared sometime after the 2002 closing and that the Preserve Road encroachment was an "after purchase encroachment."

The unrecorded plat, which is dated February 6, 2002, indicates in dotted lines those boundary lines from the "original configuration" that bordered the acreage being shaved off the lot for a newly configured lot. The 2002 plat noted the date for the original configuration as December 10, 2001. The plat also shows Preserve Road traversing the northeastern part of the original configuration and a small area of the northwestern corner of the original configuration. Randy Herron, who had prepared the December 10, 2001 plat, also prepared the 2002 plat. He indicated that he delivered the 2002 plat to Balsam on or about February 6, 2002.

After notifying Appellants of their reduced acreage, Balsam asked Appellants to sign a quitclaim deed reflecting the reduced size of Lot 108 and Preserve Road running through the original configuration of the lot as shown in the second plat, but Appellants refused to do so. From that point forward, Balsam and its successor in interest, Balsam Mountain Group, LLC (BMG),[5] exercised control over Preserve Road and the .437 acres in dispute. In early 2012, Appellants discovered that the

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[2] According to Appellants, they refinanced their purchase of the lot in 2004 and again in 2006, and Chicago Title issued a policy insuring title to the lot on both occasions. According to Chicago Title, the latter policies were lenders' policies.

[3] A copy of this plat, along with two additional plats dated February 6, 2002, and April 8, 2014, respectively, is included in the exhibit at the end of this opinion.

[4] Lehman was not employed with Balsam until 2005.

[5] According to Appellants, BMG purchased Balsam Mountain Preserve in October 2011, "at some point after it was sold at foreclosure."

unrecorded plat had been prepared for Balsam two weeks before the 2002 closing and, thus, Preserve Road actually encroached on the original configuration of Lot 108 before the closing.[6]

Subsequently, Appellants submitted a claim to Chicago Title based on Balsam's and BMG's reliance on the unrecorded plat, but Chicago Title denied the claim on August 21, 2012. On July 18, 2013, Appellants filed this action against Balsam Mountain Preserve Community Association (the Association), Chicago Title, and Counsellor Title Agency, Inc. (Counsellor Title), Chicago Title's agent, asserting causes of action for Continuous Trespass (as to the Association), Encroachment (as to the Association), and Breach of Contract (as to Chicago Title and Counsellor Title). Appellants also commissioned a new survey to confirm that Preserve Road traversed the 1.837 acres they purchased. This plat is dated April 8, 2014, and shows Preserve Road traveling in a winding path from the southeastern part of the lot to its northeastern part but not touching on the northwestern corner as shown in the February 2002 unrecorded plat.

On April 14, 2014, Appellants filed an Amended Complaint substituting Balsam for the Association, alleging that Balsam was the alter-ego of the Association, and adding the following causes of action against Balsam: Fraud, Negligent Misrepresentation, Rescission, Breach of Contract, "Breach of Contract with Fraudulent Intent Accompanied by Fraudulent Act," Breach of Fiduciary Duty, Conversion, Unjust Enrichment, Accounting, and Indemnification. As to Chicago Title and Counsellor Title, the Amended Complaint asserted causes of action for Breach of Contract and Negligence.

On April 16, 2014, Chicago Title filed a motion to dismiss the Amended Complaint, which the Honorable Ernest Kinard denied on September 3, 2014. Counsellor Title also filed a motion to dismiss the Amended Complaint on April 28, 2014, and Judge Kinard denied this motion as well. Subsequently, Chicago Title filed its Answer and asserted several affirmative defenses, including the statute of limitations.

Appellants then filed their Second Amended Complaint on January 6, 2015, to (1) add as defendants BMG and the law firm of Coward, Hicks & Siler, P.A. and J.K. Coward, Jr., the attorney who represented Appellants in their purchase of Lot 108 (collectively, the Coward defendants), and (2) add a cause of action for

[6] In 2016, BMG paved Preserve Road over Appellants' objections.

Successor Liability (as to BMG) and numerous causes of action against the Coward defendants.

In July 2015, Chicago Title and Counsellor Title filed their respective motions for summary judgment, and Appellants filed a Third Amended Complaint on August 5, 2015. The Honorable Carmen Mullen conducted a hearing on Chicago Title's summary judgment motion on June 13, 2016. Judge Mullen issued an order granting the motion on August 25, 2016.

In her order, Judge Mullen concluded (1) Appellants' action was barred by the three-year statute of limitations set forth in section 15-3-530 of the South Carolina Code; (2) the February 2002 plat did not have any impact on Appellants' title to Lot 108 because this plat was unrecorded and pursuant to North Carolina statutory law, "unrecorded interests in land are invalid against subsequent purchasers of property"; (3) none of the Policy's "Covered Title Risks" were triggered by Appellants' allegations or evidence; (4) no defects in title were in existence when Chicago Title issued the Policy; and (5) there was no evidence of any negligence on the part of Chicago Title because no title search would have revealed the second, unrecorded plat. This appeal followed.[7]

ISSUES ON APPEAL

1. Did the circuit court err by concluding that the Policy's coverage was limited to defects of record?

2. Did the circuit court err by finding there were no defects in title when the Policy was issued?

3. Did the circuit court err by concluding that the breach of contract claim against Chicago Title is barred by the statute of limitations?

STANDARD OF REVIEW

This court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the

[7] Appellants do not challenge summary judgment on their negligence cause of action against Chicago Title.

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all the inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009); *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

"Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Id.*

Further, "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803; *see also Radcliffe v. S. Aviation Sch.*, 209 S.C. 411, 420, 40 S.E.2d 626, 630 (1946) ("A scintilla of evidence is *any material* evidence that, if true, would tend to establish the issue in the mind of a reasonable jury." (emphasis in original) (quoting *In re Crawford*, 205 S.C. 72, 30 S.E.2d 841, 849 (1944))); *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724 (1935) (defining "scintilla" as the smallest trace). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). Moreover, "[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.*

LAW/ANALYSIS

I. Scope of Coverage

Appellants assert the circuit court erred by concluding that the Policy's coverage was limited to defects of record. At oral argument, Chicago Title conceded this point, and we agree.

In its order, the circuit court concluded that the "unrecorded plat cannot create any encumbrance and cannot create any damages for [Appellants] by [Chicago Title] as it has no impact upon [Appellants'] title to their property." The circuit court also concluded,

> There is simply no breach by Chicago Title as [Appellants] received the title referenced in both their recorded deed and the [r]ecorded [p]lat referenced in that deed.
>
> None of the enumerated "Covered Title Risks" in the Policy are triggered by [Appellants'] allegations related to the unrecorded plat or by any evidence presented to this [c]ourt . . . .

We begin our analysis by referencing case law concerning the construction of insurance policies.

> Insurance policies are subject to the general rules of contract construction. The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary, and popular meaning.

Pres. Capital Consultants, LLC v. First Am. Title Ins. Co., 406 S.C. 309, 316, 751 S.E.2d 256, 259 (2013) (quoting *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012)).

> Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. Ambiguous or conflicting terms, however, must be construed liberally in favor of the insured and strictly against the insurer. It is a question of law for the court whether the language of a contract is ambiguous.

Id. (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628).

"Generally, title insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title [that] are in existence at the time the

insured takes title." *Firstland Vill. Assocs. v. Lawyer's Title Ins. Co.*, 277 S.C. 184, 186, 284 S.E.2d 582, 583 (1981). "A title insurer is generally liable for losses or damages caused by defects in the property's title, and defects for which title insurance policies provide coverage may generally be defined as liens and encumbrances that result in a loss in the title's value." *Pres. Capital Consultants*, 406 S.C. at 316, 751 S.E.2d at 259 (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628). "The terms of individual insurance agreements can control the method of valuation, but the purpose of title insurance has been stated as seeking to place the insured in the position he thought he occupied when the policy was issued." *Id.* at 316, 751 S.E.2d at 259–60. "Generally, the measure of damages should 'compare the encumbered value of the entire tract of . . . land with what the value of the entire tract of land would be without any encumbrances.'" *Id.* at 316, 751 S.E.2d at 260 (alteration in original) (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628).

Here, the Policy lists the following pertinent "Covered Title Risks" if they affect the insured's title on the Policy Date:[8]

> 1. Someone else owns an interest in your title.
>
> 2. A document is not properly signed, sealed, acknowledged, or delivered.
>
> 3. Forgery, fraud, duress, incompetency, incapacity[,] or impersonation.
>
> 4. Defective recording of any document.
>
> 5. You do not have any legal right of access to and from the land.
>
> 6. There are restrictive covenants limiting your use of the land.

[8] The Policy defines "Title" as "the ownership of your interest in the land, as shown in Schedule A," and item 2 of Schedule A states, "Your interest in the land covered by this Policy is: Fee Simple and Easement" subject to a Deed of Trust for Lighthouse Community Bank in the amount of $250,000.00 and the matters shown in Schedule B, which lists exceptions from coverage, such as taxes for 2002 and subsequent years.

7. There is a lien on your title because of:

   • a mortgage or deed of trust

   • a judgment, tax, or special assessment

   • a charge by a homeowner's or condominium association

8. There are liens on your title, arising now or later, for labor or material furnished before the Policy Date—unless you agreed to pay for the labor and material.

9. Others have rights arising out of leases, contracts, or options.

10. Someone else has an easement on your land.

11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease[,] or to make a mortgage loan.

12. You are forced to remove your existing structure—other than a boundary wall or fence—because:

   • it extends on to adjoining land or on to any easement

   • it violates a restriction shown in Schedule B

   • it violates an existing zoning law

13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.

14. Other defects, liens, or encumbrances.

Additionally, the Policy provides a definition for "Public Records": "title records that give constructive notice of matters affecting your title—according to the

state statutes where your land is located." This term appears in items 1 through 3 of the Policy's "Exclusions":

> 1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
> ● land use
>
> ● improvements on the land
>
> ● land division
>
> ● environmental protection
>
> This exclusion does not apply to violations or the enforcement of these matters [that] *appear in the public records* at Policy Date.
>
> . . .
>
> 2. The right to take the land by condemning it, *unless*:
>
> ● a notice of exercising the right *appears in the public records* on the Policy Date.
>
> . . .
>
> 3. *Title Risks*:
>
> . . .
>
> ● that are known to you, but not to us, on the Policy Date—*unless they appeared in the public records*

(emphases added).

First, if the term "Title Risks" in item 3 already excluded matters not in the public records, there would have been no need to add the phrase "unless they appeared in the public records." In other words, adding the phrase "unless they appeared in the public records" implicitly acknowledges that the risk may not appear in the public records. Therefore, there is a reasonable inference from the key language in item 3 that the term "title risk" includes matters that do not appear in the

public records. This lends context to the list of the fourteen Covered Title Risks. We also agree with Appellants' argument that nowhere in the Policy is there any language expressly stating the Policy generally excludes defects not appearing in the public records. Again, Chicago Title conceded this point at oral argument.

Further, Appellants assert that several of the listed Covered Title Risks applicable to this action are matters that are necessarily outside the public records. As to item 1, "Someone else owns an interest in your title," Appellants highlight the Policy's definition of "Title,"[9] which does not reference the public records. Appellants also connect item 1 to their circumstances by highlighting the conformity of their own commissioned survey with the February 2002 plat showing that the reality of their ownership interest is not represented by the December 2001 plat appearing in the public records. Appellants note (1) Balsam's and BMG's continued assertion of ownership of the land underlying the Preserve Road encroachment, (2) the mysterious destruction of steel posts Appellants had placed in the ground to assert their ownership of certain areas in accordance with the recorded plat, and (3) BMG's disregard of Appellants' requests to leave Preserve Road unpaved.

As to Item 3, "Forgery, fraud, duress, incompetency, incapacity[,] or impersonation," Appellants note that Balsam was held in default for failure to answer the Amended Complaint and, thus, Balsam effectively admitted that it defrauded Appellants. We also note this item covers incompetency, which would fit Appellants' allegation that Balsam recorded the wrong plat, i.e., the December 10, 2001 plat, when it should have recorded the February 6, 2002 plat.

In sum, the Policy's plain language clearly indicates that it covers certain matters that would not necessarily appear in the public records. Not only is there a notable absence of the phrase "public records" in the list of Covered Title Risks but also as a practical matter, multiple items in this list are not necessarily consistent with the recordation of any documents, such as adverse possession, fraud, incompetency, and impersonation. Further, the Policy includes a notable exception to certain excluded Title Risks for those matters "appear[ing] in the public records," implying that the term "Title Risks" includes certain matters not appearing in the public records.

Even if the Policy's terms were ambiguous as to coverage, Appellants have presented at least a scintilla of evidence establishing a genuine factual issue

[9] The Policy defines "Title" as "the ownership of your interest in the land . . . ." *See supra* n. 8.

concerning the parties' intent as to coverage of matters not appearing in the public records. *See* Rule 56(c), SCRCP (stating that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law." (emphasis added)); *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."); *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001) ("A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. It is a question of law for the court whether the language of a contract is ambiguous. *Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties*. The determination of the parties' intent is then a question of fact." (emphasis added) (citations omitted)).

Appellants cite the following deposition testimony of Chicago Title's representative, Cynthia Baines:

> Q. Is Chicago's position that it does not provide coverage so long as the record title is correct?
>
> A. I would say that the coverage is governed by the terms and conditions of the policy[,] so there are possibly circumstances where there would be coverage for things that are not of record title . . . .

Baines gave an example of someone impersonating a landowner and purporting to convey the owner's land to an insured under the Policy. This example would likely fall within item 3 of the Covered Title Risks, "Forgery, fraud, duress, incompetency, incapacity[,] or *impersonation*." (emphasis added).

Appellants also cite to William Loflin's supplemental affidavit as relevant to the intent underlying the Policy's language. This affidavit states that when Mr. Loflin purchased the Policy, he did not intend for the Policy's coverage to be limited to matters of public record. *See Pres. Capital Consultants,* 406 S.C. at 316, 751 S.E.2d at 259 (holding that ambiguous or conflicting terms in an insurance policy "must be construed liberally in favor of the insured and strictly against the insurer" (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628)).

Based on the foregoing, the circuit court erred in concluding, as a matter of law, that the Policy's coverage was limited to defects of record.[10]

II. Existence of Defect

Appellants assert the circuit court erred by finding there were no defects in Appellants' title when the Policy was issued, which was February 19, 2002. We agree.

"Title insurance is unique in that it is retrospective, not prospective." *Firstland Vill. Assocs.*, 277 S.C. at 186, 284 S.E.2d at 583.

> The risks of title insurance end where the risks of other kinds begin. Title insurance, instead of protecting the insured against matters that may arise during a stated period after the issuance of the policy, is designed to save him harmless from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it.

Id. (quoting *Nat'l Mortg. Corp. v. Am. Title Ins. Co.*, 261 S.E.2d 844, 847–48 (N.C. 1980)).

Here, Appellants state that the unrecorded plat reflecting the Preserve Road encroachment is dated February 6, 2002, and the surveyor who prepared this plat, Randy Herron, indicated he delivered the plat to Balsam on approximately the same date. Therefore, the plat's preparation and delivery to Balsam pre-date the Policy's February 19, 2002 issuance. Appellants also challenge the circuit court's statement that they suffered no damages because the unrecorded plat had no impact on

[10] Appellants also argue Judge Kinard's denial of Chicago Title's motion to dismiss the Amended Complaint was the law of the case and, thus, precluded Judge Mullen from concluding as a matter of law that the Policy's coverage was limited to matters of public record. They note that there were no differences in the factual record and legal arguments presented by Chicago Title as to both motions. Nonetheless, "[t]he denial of a Rule 12(b)(6) motion does not establish the law of the case nor does it preclude a party from raising the issue at a later point or points in the case." *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 431, 622 S.E.2d 564, 567 (Ct. App. 2005) (alteration in original) (quoting *Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995)).

Appellants' title. They distinguish between the unrecorded plat and what this plat *represents*, i.e., Preserve Road encroaching on their lot, the lot's diminished acreage, and the impact on the resulting value of the lot compared with the value of the lot as represented on the recorded plat. Appellants cite to testimony of Balsam's former President, Craig Lehman, indicating that the Preserve Road encroachment had a negative impact on the lot's marketability.

In other words, the recorded deed and plat do not reflect the reality of Appellants' interest in Lot 108 on the date the Policy was issued. While the February 2002 plat itself may not affect Appellant's title due to Balsam's failure to record it, Appellant's ownership interest in the land on the date of the Policy's issuance was affected by what the 2002 plat *reflected* on the ground, i.e., the Preserve Road encroachment and the diminished acreage. Notably, Lehman admitted to the existence of the Preserve Road encroachment and to the disconnect between what Appellants paid for and what the February 2002 plat accurately reflected on the ground. For these reasons, we reject Chicago Title's argument that the Policy does not cover these title defects because the February 2002 plat was not discovered until after the Policy's issuance. As to the land underlying the Preserve Road encroachment, Balsam has aggressively challenged Appellants' ownership interest. *See supra* Section I. Further, as previously stated, Appellants have presented evidence showing this encroachment has had a negative impact on the marketability of Lot 108. Hence, the Preserve Road encroachment and Appellants' loss in acreage fall within items 1, 3, and 14 of the Policy's "Covered Title Risks," i.e., "Someone else owns an interest in your title," "Forgery, *fraud*, duress, *incompetency*, incapacity[,] or impersonation," (emphases added) and "Other defects, liens, or encumbrances."

Based on the foregoing, Appellants presented, at the very least, a scintilla of evidence showing a defect in the title that Chicago Title insured in February 2002. *See Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."); *Radcliffe*, 209 S.C. at 420, 40 S.E.2d at 630 ("A scintilla of evidence is *any material* evidence that, if true, would tend to establish the issue in the mind of a reasonable jury." (emphasis in original) (quoting *In re Crawford*, 205 S.C. at 30 S.E.2d at 849)); *Bethea*, 177 S.C. at 529, 181 S.E. at 724 (defining "scintilla" as the smallest trace). Therefore, the circuit court erred in granting summary judgment to Chicago Title. *See* Rule 56(c), SCRCP (stating that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is *no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law." (emphasis added)).

III. Statute of Limitations

Appellants contend the circuit court erred by concluding that their breach of contract claim against Chicago Title was barred by the statute of limitations because (1) the action did not accrue until 2012 and, (2) the applicable statute of limitations is twenty years rather than three years. At oral argument, Chicago Title conceded that the applicable statute of limitations is twenty years pursuant to section 15-3-520(b) of the South Carolina Code (2005) and, thus, Appellants' breach of contract claim is not time-barred. We agree, and therefore, we need not address the date of the claim's accrual. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

The circuit court concluded that section 15-3-530 of the South Carolina Code applied to Appellants' breach of contract cause of action against Chicago Title. However, section 15-3-520 states that the limitations period is twenty years for the following causes of action:

> (a) an action upon a bond or other contract in writing secured by a mortgage of real property;
>
> (b) an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725.

S.C. Code Ann. § 15-3-520 (2005).

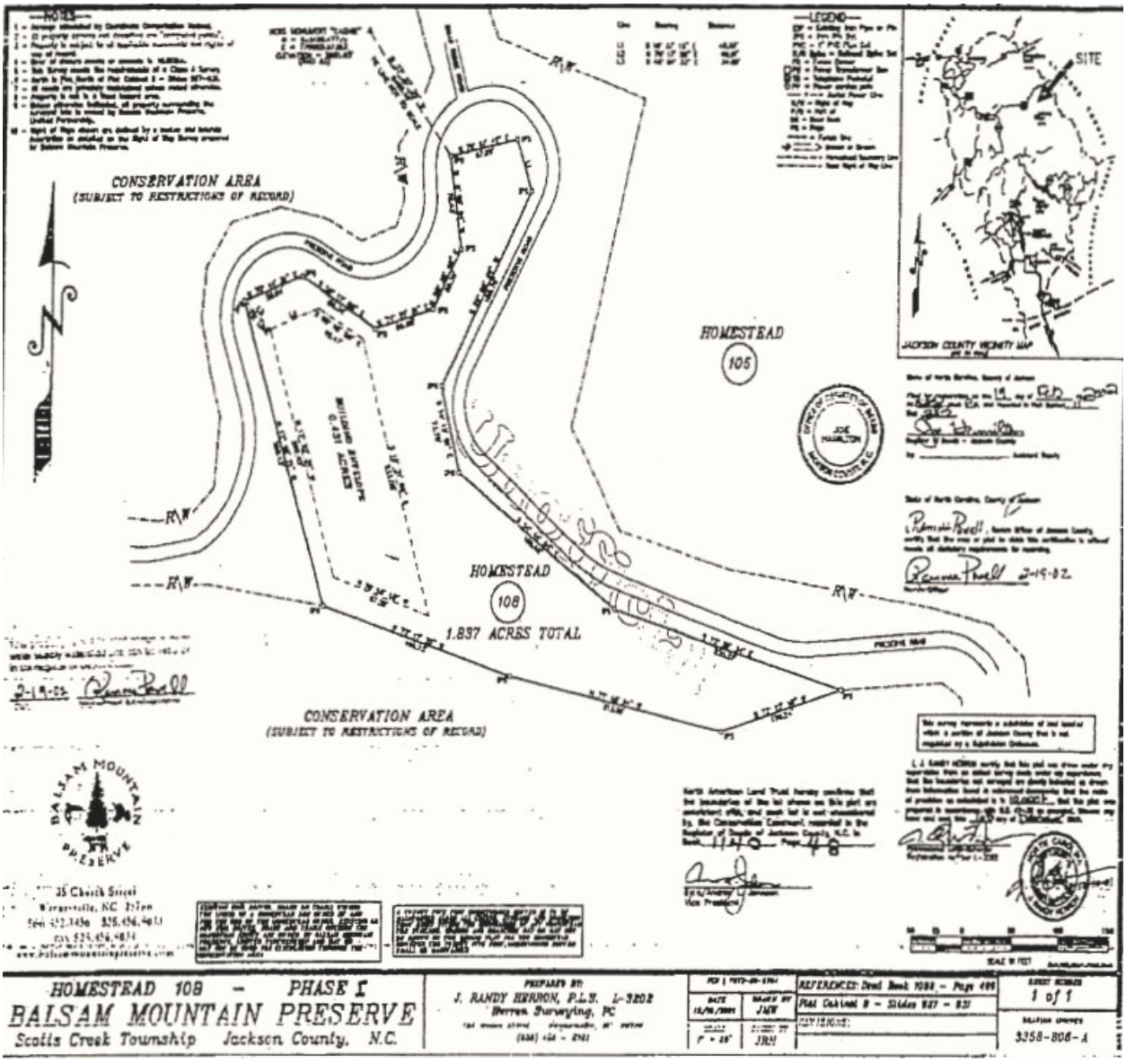
Here, the Policy qualifies as a sealed instrument because it bears the corporate seal of Chicago Title next to the signatures of its President and a second representative, which shows an intent to create a sealed instrument. Therefore, we agree that section 15-3-520 applies to the breach of contract claim against Chicago Title and the circuit court erred in concluding that this claim was barred by the statute of limitations.

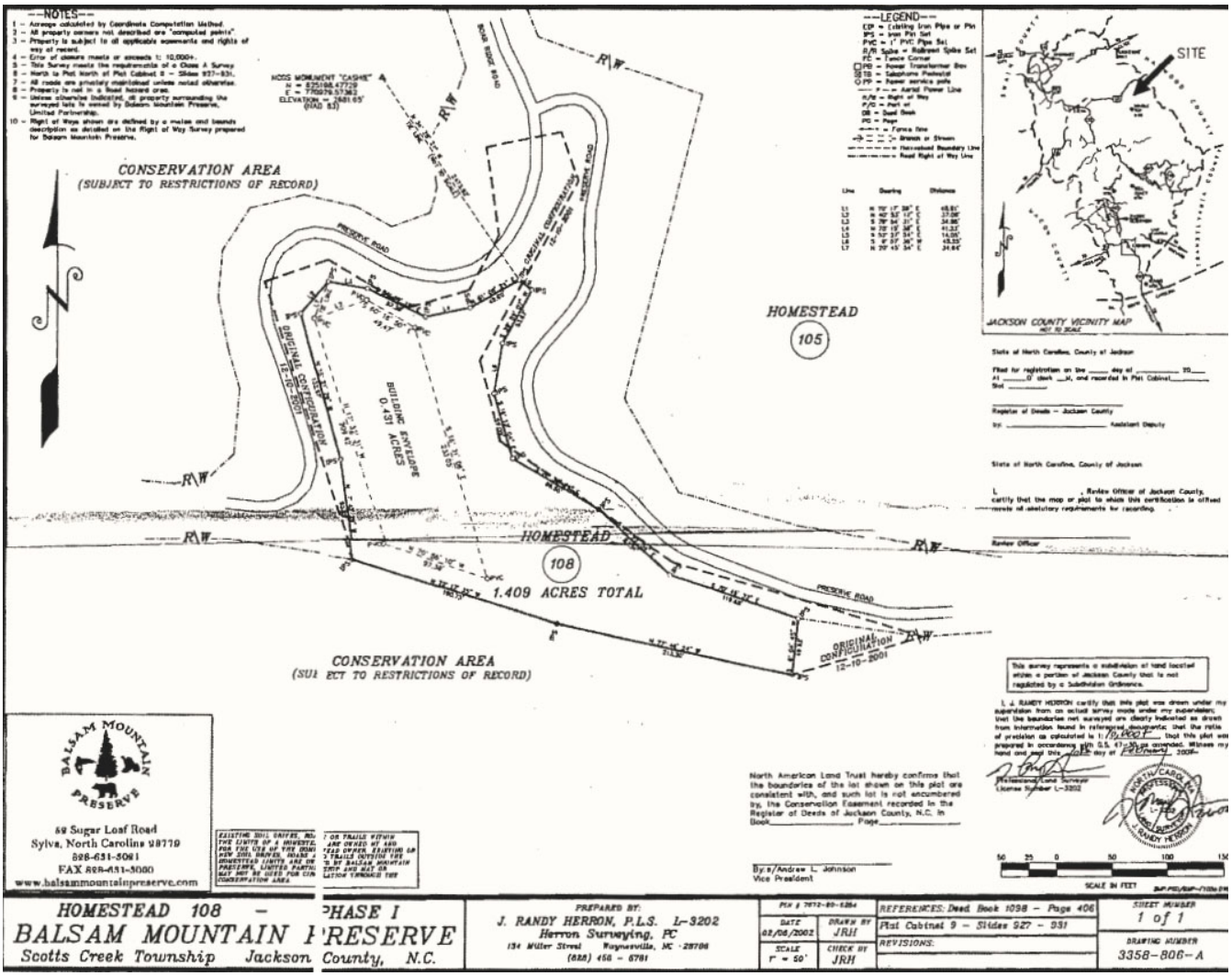
CONCLUSION

Accordingly, we reverse the circuit court's order granting summary judgment to Chicago Title, and we remand for a trial on the merits.

REVERSED AND REMANDED.

LOCKEMY, C.J., and HILL, J., concur.




NOTES
LEGEND
CONSERVATION AREA
(SUBJECT TO RESTRICTIONS OF RECORD)
HOMESTEAD
105
HOMESTEAD
108
1.409 ACRES TOTAL
BUILDING ENVELOPE
0.431 ACRES
PRESERVE ROAD
BEAR ROCK ROAD
ORIGINAL CONFIGURATION
12-10-2001
SITE
JACKSON COUNTY VICINITY MAP
NOT TO SCALE
BALSAM MOUNTAIN PRESERVE
69 Sugar Loaf Road
Sylva, North Carolina 28779
828-631-5081
FAX 828-631-5080
www.balsammountainpreserve.com
North American Land Trust hereby confirms that the boundaries of the lot shown on this plat are consistent with, and such lot is not encumbered by, the Conservation Easement recorded in the Register of Deeds of Jackson County, N.C. in Book _____ Page _____
By: s/Andrew L. Johnson
Vice President
SCALE IN FEET
HOMESTEAD 108 – PHASE I
BALSAM MOUNTAIN PRESERVE
Scotts Creek Township Jackson County, N.C.
PREPARED BY:
J. RANDY HERRON, P.L.S. L-3202
Herron Surveying, PC
134 Miller Street Waynesville, NC 28786
(828) 456 – 6781
DATE 03/06/2002
DRAWN BY JRH
SCALE 1" = 50'
CHECK BY JRH
REFERENCES: Deed Book 1098 – Page 406
Plat Cabinet 9 – Slides 927 – 931
REVISIONS:
SHEET NUMBER 1 of 1
DRAWING NUMBER 3358-806-A