

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
Rene McMasters, now)
Rene McMasters Ronaghan,)
)
Plaintiff,)
)
-vs-)
)
H. Wayne Charpia, et al.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2009CP1802200

ADMINISTRATIVE
ORDER OF DISMISSAL
ON THE MOTION BY
HOWARD W. CHARPIA TO
TO SET ASIDE A VOID SALE

RECEIVED

JUL 05 2022

SC Court of Appeals

On October 21, 2021, Mr. Howard W. Charpia (who is self-represented) filed a document captioned as a Motion to Set Aside Sale/Void and Set Aside Judgment, accompanied by forty-five pages of what he denominated as exhibits. The essence of the motion is a claim of fraud upon the court, which seemingly would be the only possible ground that could be raised at this stage. The motion is administratively dismissed for the following reasons.¹ First, a claim for fraud upon the court is made by an independent action in equity, and Mr. Charpia has filed an independent action seeking the same relief on the same applicable grounds in Case Number 2021CP1801390. The present motion is not an independent action under Rule 60, but a motion filed in a thirteen-year-old, closed attachment case trying to set aside a sale that took place in 2017 pursuant to a judgment lien, and seeking to vacate the underlying judgment rendered in 2004 in Case Number 2002CP1800932. Allowing this motion to proceed could lead to inconsistent

¹ The court has spent days going through the files of these cases to try to sort out the claims that have been raised throughout various lawsuits. This case was assigned to the undersigned judge with exclusive jurisdiction, by order of the Chief Justice of the Supreme Court of South Carolina. The orders concerning operation of courts due to the impact of the COVID-19 virus provide that a "judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input [.]"

determinations and does not appear to be the proper vehicle. Second, the file contains no proof of service of the motion. Third, to the extent that this motion may be read to address issues that are unrelated to the independent action asserting fraud upon the court, those claims on their face cannot be asserted again because they have repeatedly been raised to and ruled upon by various trial and appellate courts. Mr. Charpia maintains that he has not raised fraud upon the court before, but the record reveals otherwise, as discussed below. However, to make clear, nothing in this ruling is a binding determination of whether or not his independent action for fraud upon the court in the 2021 case can survive.

BASIC BACKGROUND

Mr. Charpia operated a business as a building contractor. He constructed a residence for the plaintiff, who sued him and his company in 2002. A jury awarded a judgment in favor of the plaintiff. For nearly two decades, Mr. Charpia has engaged in repetitive efforts to attack the judgment and the resulting execution upon his property. His property was eventually sold on the third attempt in 2017, with the plaintiff being the high bidder.² Mr. Charpia continues to try to re-litigate issues. The court has tried to communicate the principle of finality applicable to legal proceedings, without success.

² One of the issues that Mr. Charpia has raised on many occasions is a challenge based on the expiration of the ten-year period of active energy for enforcement of a judgment. In *Gordon v. Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018), the Supreme Court reversed *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010), and established that a judgment's enforceability is not extended beyond the ten-year limit "merely by filing the action within ten years." Unfortunately for Mr. Charpia, that change in the law does not undo the determinations previously made in this case. The change applies prospectively. His previous challenges asserting that the foreclosure and sale were not proper have been raised, appealed, and denied. The rulings of other circuit judges and appellate courts are binding upon both Mr. Charpia and this court. Further, without deciding the issue of whether *Gordon* would result in a different outcome in this case were it to have been decided during the ten years immediately following entry of the judgment, it is clear that the procedural history here involves far more than merely filing an attachment action and execution on a judgment. At least one ruling in this case essentially found that the actions of Mr. Charpia prevented the orderly enforcement of the execution upon his property and made a "mockery of the judicial system."

THE PRESENT MOTION

Mr. Charpia filed this motion in the 2009 case, stating that he included "as an argument the potential ancillary case # 2002-CP-18-932, i.e. judgment was rendered in this case." In his cover letter to the Clerk of Court, he states that this is the first time that he has raised fraud upon the court. In the body of the motion he further states, "I make this motion under within [sic] 'fraud upon the court', and it is no longer equitable that the judgment shall have prospective application, and Rule 60 SCRPC, and an independent action in equity for fraud." [sic]

He then lists 16 things that he intends to show in support of his motion, which are:

1. The Plaintiff violated a Court order to obtain Counsel.
2. The Plaintiff's attorney concealed documents that "were are" [sic] material to the above-named case and motion.
3. The fabrication of evidence by which an attorney is implicated will constitute "fraud upon the Court".
4. There is no "statute of limitations" when a party seeks to set aside a [judgment] due to "fraud upon the court".
5. There is no statute, rule or regulation to "foreclose on a judgment lien" in the State of South Carolina, i.e. SC Code 15-39-30 shall be followed to satisfy a judgment.
6. That the judgment rendered was against Charpia Residentials, LLC and Howard W. Charpia, case # 2002-CP-18-932.
7. That the plaintiff's attorney suborned perjury to obtain said judgment which constitutes "fraud upon the court".
8. Attorney Cisa violated his ethical obligation pursuant to 3.3(a)(1)(3), Candor to the Tribunal, i.e. not taking remedial measures to correct said false statements and suborning perjured testimony.
9. That Rule 59, SCRPC were [sic] violated on numerous occasions, i.e. the trial judge shall retain jurisdiction.
10. That Attorney Cisa submitted a fraudulent "affidavit" on August 1, 2017 to the Court and Dorchester County.
11. That Dorchester County and Attorney Cisa did conspire to injure the Defendant before the sale of August 1, 2017.
12. The sale price on August 1, 2017 shall "shock the conscience" of the Court.
13. McMasters lied to the Court at said trial in August 2004, i.e. she would have to "disclose" all defects for the home to a potential buyer by law, McMasters did not disclose to buyers in 2005 about defects.

14. Cisa submitted affidavit on August 1, 2017 stating "fair market value" was is [sic] \$59,100.00, then buying said property in 2021 for \$100,000.00.
15. Judge Dickson "abused his discretion" on July 30, 2012 by conducting a hearing as the Court violated Charpia's due process, i.e. Charpia was not properly notified of said hearing.
16. Attorney Cisa never filed a "Motion for Foreclosure" hearing nor paid the required filing fee(s) to the Court or County. (letter dated 9-16-2015) thus violating the SCRCP.

It is common for Mr. Charpia to insist that he is raising new matter. Because there is no statute of limitations, the court agrees that he may raise, subject to rebuttal and possible frivolous proceedings sanctions, an independent action for fraud upon the court. The propriety of that case being allowed to proceed is not before this court. However, his assertion that he has not raised fraud upon the court is not supported by the record, even putting aside the repeated allegations of fraud that do not specifically use the phrase "fraud upon the court." After being denied relief for alleged fraud under Rule 60(b)(3) and (4), SCRCP, he filed a motion on September 23, 2015, under Rule 60 and Rule 7, seeking to vacate the Order of Foreclosure and Sale and/or for a Rule to Show Cause, definitely using the phrase "fraud upon the court." On February 16, 2017, in another motion for a new trial, he raised essentially the same issues as one filed on September 23, 2015, and a later one filed on April 3, 2017. The motions allege fraud upon the court.

RULE 60

Rule 60(b)(3) provides that an order may be set aside for fraud, misrepresentation, or other misconduct of an adverse party, but it must be brought not later than one year from the entry of the judgment. All subsections of Rule 60(b), including (3) and (4), require that the motion be brought within a reasonable time.

Mr. Charpia is focusing on the portion of Rule 60(b) which provides that it "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court." The pending 2021 lawsuit is against opposing counsel (Mr. Cisa) and others for fraud upon the court, conspiracy, slander of title, abuse of process, and extortion. His present motion makes the argument that there is no time limit for raising fraud upon the court, citing *Chewning v. Ford Motor Company*, 354 S.C. 72, 579 S.E.2d 605 (2003)

POINTS RAISED AND EXHIBITS IN SUPPORT

To the extent that the motion can be read as something other than an allegation of fraud upon the court, most of the sixteen grounds listed by Mr. Charpia are allegations of an evidentiary nature. On their face, the issues raised have been addressed and do not constitute grounds for relief in this case under this motion. They have been decided. If Mr. Charpia has evidence of fraud upon the court, he must raise it and present his proof in the independent action.

THEREFORE, IT IS ORDERED that the motion is administratively dismissed.

AND IT IS SO ORDERED.

[Electronic signature follows on separate page.]