STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2011-CP-26-4556
CAREY GRAHAM AND RODNEY A. CHARDUKIAN, PLAINTIFFS, VS. STEPHEN ERIC ROBINSON, DEFENDANT.	)	JUDGMENT AGAINST THE DEFENDANT

PRELIMINARY MATTERS

This is an equitable action under the Statute of Elizabeth by a judgment creditor to set aside two deeds from the debtor Brenda Robinson Babb ("Babb") to the Defendant upon the grounds that the deeds are fraudulent transfers by Babb to her brother, done to avoid a large judgment obtained by the Plaintiffs against Babb. The Plaintiffs, in a derivative action, instituted a civil action for damages against Defendant's sister Brenda Robinson Babb in 2004. A default damages hearing was heard on March 23, 2011 before the Honorable R. Ferrell Cothran, Circuit Court Judge. At that time, sister Babb knew or should have known that a judgment in excess of $777,654.55 would be rendered against her for monies she converted from the Plaintiffs. The Plaintiffs obtained a judgment in the original amount of $977,654.55 against Babb, which was filed May 17, 2011 in the Clerk of Court, in the case captioned Carey Graham and Rodney A. Chardukian vs. Brenda R. Babb, et al., Civil Action No.: 2004-CP-26-3498. Three days after attending the damages hearing, Babb went to Charlotte where the Defendant executed a short Contract of Sale to purchase two properties in the Town of Little River from Babb. On April 11,

2011, Babb executed and filed deeds transferring a lot located on Minolta Drive in Little River and another Deed transferring her undivided 1/3 interest in an 8.4 acre tract she owned with a corporation to the Defendant for the stated considerations of $60,300.00 and $133,333.33. The Defendant allegedly paid $5,000.00 as a down payment and was required by the Contract to make monthly payments of $500.00 to Babb. There was no promissory note executed and no mortgage filed with the public records to secure the debt to Babb. The Plaintiffs filed this action and a Notice of Lis Pendens on May 26, 2011, seeking to invalidate the transfers under the Statute of Elizabeth.

LEGAL ISSUES:

The law has long recognized that transfers of real property to avoid payment to a creditor are subject to collateral attack. The Statute of Elizabeth, codified as S.C. Code Ann. 27-23-10 et seq., provides:

> that every ...conveyance of land made to or for any intent or purpose to delay, hinder, or defraud creditors and other of their just and lawful actions, suits, debts, accounts, damages,....must be deemed and taken (only as against that person or persons), his or their heirs, successors, executors, ...by guileful, covinous, or fraudulent devices and practices are, must or might be in anyways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

A conveyance may be set aside as fraudulent under the Statute if it was voluntary or if there is actual intent to defraud the grantor's creditors. Royal Z Lanes, Inc. v. Collins Holding Corp., 337, S.C. 261, 265, 460 S.E.2d 406, 408, (Ct. App 1995). Where the transfers to members of a family are attacked either upon the ground of actual fraud or on the account of their voluntary character, the law imposes the burden of proof on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony. If the

transfers are voluntary, a creditor must establish (1) the grantor was indebted to the creditor at the time of transfer; (2) the conveyance was voluntary; (3) and the grantor failed to retain sufficient property to pay the indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt. Mathis v. Burton, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct. App.1995). See Gardner v. Kirven, 184 S.C. 37, 41, 191 S.E. 814, 816 (1936). It is not necessary that the judgment was not entered until several weeks after the transfer, it is only necessary that the debt be in existence or the right of action have accrued at or before the transfer. Matthews v. Montgomery, 193 S.C. 118, 133, 7 S.E.2d 841, 847 (1940). The conveyances can be set aside under two conditions: First, where the transfer is made by the grantor with the actual intent to defrauding her creditors where that intent is imputable to the grantee, even though there is a valuable consideration; and second, where a transfer is made without actual intent to defraud, but without consideration. Farmers' Bank v. Bradham, 129 S.C. 270, 123 S.E. 835. Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing evidence. See Gardner v. Kirven, et al., 184 S.C. 37, 191 S.E. 815 (S.C. 1937). Here, it is clear that the two transfers by the grantor Babb were clearly intended to defraud the Plaintiffs as a judgment was imminent and a judgment lien would clearly cloud the title transferred. Since the Defendant paid only minimal money down and there was no mortgage to secure the balance that may be due, the transfers are treated as voluntary and without material consideration and shifted the burden to the Defendant to establish that he was a bona fide purchaser for value, without imputed knowledge of the actions of his sister.

FINDING OF FACT AND CONCLUSIONS OF LAW

The Plaintiffs called the Defendant and Babb as hostile witnesses and received testimony from James T. Young, Esq., who was employed by Babb to prepare the two Deeds transferring the property to the Defendant. Attorney Young was qualified as an expert in real estate law transactions in Horry County and offered, in addition to factual testimony, expert testimony on how real estate transactions are typically transacted in this County. Based upon the testimony and evidence presented, and viewing the creditability and believability of the witnesses, I find the following as matters of fact and conclusions of law:

1. That on March 23, 2011, the defendant's sister, Brenda Robinson Babb, attended a default damages hearing in Manning, South Carolina. I find that Babb knew or should have known that a large judgment was going to be rendered against her and in favor of the Plaintiffs in this action, for wrongful acts for which she had no legal defense or that she was unable to assert because of misconduct in that proceeding. I find that such limitation on her ability to defend the action is well documented in that proceeding and in two published appeals in that case.

2. That Babb then prepared a written "Contract of Sale" where she contracted to transfer her interest in two valuable parcels of real property located in the Town of Little River, South Carolina for the stated considerations of $60,300.00 and $133,333.33 to the Defendant, who is her younger brother. That the Contract states that Babb and the Defendant executed the contract on March 26, 2011, three days after the default damages hearing.

3. That at the time of execution of the Contract of Sale, the Defendant had never seen the lot on Minolta Drive and had not seen the 8.4 acre tract since before 2003, when he last visited his sister Babb. The Defendant admitted he did not know the value of the properties "purchased" and that he had "agreed" to pay what Babb said she wanted for the purchase price.

That the Defendant is sixty one years of age, is a carpenter, and has no liquid assets other than his ownership of his personal home in Charlotte. That in the year before this transaction, Defendant went through a divorce and was forced to sell his only investment property at a substantial loss. The Defendant testified he first saw the lot purchased the day before his deposition was taken by the Plaintiff this year. He testified he didn't know if he was paying interest and he thought Babb could "take the property back" if he didn't make the payments.

4. That in the discovery produced by the Defendant, the Defendant generally had less than $2,500.00 in his one Bank account. There are no debits from the Defendant's Bank checking account for the alleged $5,000.00 down payment or the monthly payments of $500.00 required to be paid to Babb under the Contract. There are no deposits in Babb's Bank accounts for the $5,000.00 down payment or for any other monthly installments from the Defendant. There is a complete lack of documentary written evidence of the transaction actually occurring, other than the recording of the Deeds and the Contract.

5. That Babb employed attorney James Young of Conway, South Carolina to prepare two Deeds transferring the properties to the Defendant. Attorney Young was qualified as an expert in closing real estate transactions in South Carolina. Young was not provided with a copy of the Contract of Sale by Babb or the Defendant and was not requested to search the title or prepare a note and mortgage to secure the purchase price. He did not handle any closing funds for Babb and the Defendant. In fact, Young had no contact with the Defendant. Young testified that if Babb had disclosed that a large judgment was about to the entered against her, he would not have prepared the two Deeds, as they would have been fraudulent transfers of title. As an expert in real estate transactions, Mr. Young opined that it was highly unusual for a purchaser to pay $200,000.00 to purchase two parcels of real estate without having seen the property or

having the title examined. He opined that it was extremely "unusual" for the seller Babb to only have a $5,000.00 down payment and not have a promissory note executed in her favor from the Defendant, which would then be secured by a first mortgage lien. He testified that, in his practice, the only transfers where the real estate title would not be examined and a traditional closing not occur would be family transactions where the transfers were gifts, not fair market value sales. He opined that the transaction was suspect and very unusual and that the nature of the transaction was not explained to him by Babb or the Defendant. He opined that Babb's earlier purchase of the Minolta lot at a tax sale and the purchase of the 8.4 acres at a federal Marshall's sale were factors that would affect the marketability of the titles to the property and should have been disclosed to the Defendant. Expert witness Young opined that the Court that the transaction between Babb and the Defendant was suspicious and out of the normal "course of business." Finally, there was no formal accounting of the monies by the attorney and there was no 1099 prepared and filed, which is required to report the sale to the taxing authorities.

6. The Defendant testified that he didn't know that Babb had been in litigation for over ten years with the co-owners of the 8.4 acre and, in fact, he did not know the name of the co-owners or the zoning of the properties. The lot was purchased by Babb at a County tax sale and the acreage was purchased from a federal Marshall's sale, both highly irregular methods of purchase. The Defendant testified he knew of neither and just trusted his sister.

7. That the Defendant's name "Steven" was misspelled as Stephen on the Deed and on the legal documents he filed with the Court. The Defendant, acting pro-se, filed a Motion with the Court address to a "Steven Futeral", an attorney who represented the owners of the 8.4 acre tract in their lengthy litigation with Babb. The Defendant repeatedly denied that his sister Babb assisted him in the preparation of the Motion, in the Defense of this action or in the preparation

of the documents filed with the Court. Babb testified she did not assist the Defendants with these documents as this would be the "unauthorized practice of law." I find that only Babb had knowledge of the name of the attorney Steven Futeral and that, contrary to the testimony of Babb and the Defendant, she assisted the Defendant and preparing the Motion and similar pleadings for the Defendant in that case. Futeral was the attorney who represented the co-owners of the 8.4 acres in the litigation with Babb that lasted over 10 years. The Defendant claimed, in his responsive pleadings, that the judgment against Babb was not "final" and had been appealed and that he did not have to attend the deposition in Myrtle Beach, facts he would only have known if Babb had told him the facts of that litigation and Babb had actually prepared the Motion and responsive pleadings.

8. That I am convinced, and I find as a matter of fact, that the stated payments of $5,000.00 down and the $500.00 per month were merely a facade to create the appearance of stated consideration being paid. I find the entire transaction was voluntary and fraudulent and that no valuable consideration was ever paid by the Defendant to Babb for the purchase of the two properties. My opinion is reinforced by the lack of a deposit by Babb into her accounts for the $5,000.00 payment and monthly $500.00 payments, which Babb and the Defendant testified they continued to pay and receive even after this action with the Notice of Lis Pendens was filed. The two properties produce no income and I find that Babb failed to convince me that there was a material reason for Babb to sell the property or for the Defendant to purchase upon such short notice. I do not believe Babb's testimony that the transfer was due to extreme stresses in her life and to alleviate financial pressures she was encountering. The purported "sale" yielded a minor down payment and the purchase price was not secured by a first mortgage lien upon the property. The transaction was not beneficial for Babb and did little to change her financial circumstances.

9. I find that the judgment debtor Babb transferred the properties to the Defendant, without valuable consideration, in an attempt to defraud the Plaintiffs, who were creditors of Babb. I am furthermore convinced that, due to the relationship of the Seller with the Defendant, the Defendant was aware of his sister's intent and that he participated in the fraudulent acts of the Seller.

10. That despite Babb's allegations of other satisfactory assets to pay the Plaintiffs' judgment, the two properties are the only assets remaining that were contained in her financial statement, as her $100,000.00 in liquid assets no longer appear on her bank statements. Her only remaining disclosed asset is her interest in the Plaintiffs' entities (Cable Plus of South Carolina, Inc. and Southbridge Cable, LLC) which will not pay a dividend for 30 years according to Babb's testimony. I find that the real reason she transferred the properties to the Defendant was to avoid the debt due the Plaintiffs. Had the Defendant been a bona fide purchaser for value, he would never have filed the Motion and responsive pleadings with the Court, which obviously was prepared by and with the assistance of Babb. Had the Defendant been a bona fide purchaser for value, he would never have employed the same attorney as Babb to defend this action by the Plaintiff.

11. I find that the 8.4 acre interest was sold at less than "market" value. I have examined the financial statement or affidavit of Babb, which was presented to the Court. Apparently Babb thought she could safely "transfer" the property for its stated tax value and escape Court scrutiny. The eight acre tract is one of the only undeveloped waterfront tracts in the Town of Little River and was purchased at a federal Marshall's sale in 1997 for $400,000.00. This affidavit is discussed in the recent Court of Appeals decision affirming the judgment of Judge Cothran. In that affidavit, Babb values the acreage at over $1,000,000.00 in 1997.

Having found that the Babb clearly intended to transfer the two real properties to avoid the judgment liens of the Plaintiffs, I find that the Defendant failed to establish by clear and convincing evidence, or by any standard of proof, the bona fides of the transaction. If fact, I find that the Defendant clearly "purchased" the properties in an attempt to assist his sister in avoiding the judgment lien of the Plaintiff. I find that the Defendant never paid any "consideration" for the purchase of the properties, as I do not believe that the Defendant paid any funds to Babb for the purchase and certainly did not continue to pay Babb after this action was filed.

Having found that the transfers by the Seller were for the purpose of defrauding the Plaintiffs as her creditors, and that the Defendant failed to establish any bona fides of the transaction, it follows that the two deeds are clearly and utterly void, frustrate and of no effect pursuant to S.C. Code 27-23-10, et seq.

CONCLUSION

It is there Ordered, Adjudged and Decreed that the Deeds from Brenda R. Babb to the Defendant Stephen E. Richardson recorded in the Office of the Register of Deeds for Horry County on April 21, 2011 in Deed Book 3514 at Page 1017 and in Deed Book 3514 at Page 1020 shall be deemed utterly void and a nullity. Legal title to such properties shall remain vested in Brenda R. Babb and Brenda Robinson Babb, as if such deeds were never executed or recorded. It is furthermore Ordered that the Defendant shall pay the taxable costs and expenses of this action.

RALPH STROMAN
Special Master

March 14, 2013
Conway, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2011-CP-26-4556
COUNTY OF HORRY	)	
	)	
CAREY GRAHAM AND	)	
RODNEY A. CHARDUKIAN,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	ORDER
	)	
STEPHEN ERIC ROBINSON,	)	
	)	
DEFENDANT.	)	
	)	

The matter came before me pursuant to the Defendant's Motion for a new trial and other related relief. In the Judgment rendered by the Court, I found that Brenda Babb, the sister of the Defendant, transferred two parcels of real property to the Defendant in an attempt to defraud the Plaintiffs, who were creditors of Babb. The Defendant filed no affidavits with the motion. The Defendant alleges in his motion that the Court made conflicting findings of fact concerning the alleged $5,000.00 down payment made by the Defendant to his sister Brenda Babb for the "purchase" of the properties, and the finding of the Court that the Defendant's alleged down payment was "minimal" and voluntary and without material consideration.

At the merits hearing, I found that the testimony of the Defendant and Brenda Babb to be incredible and unbelievable. I specifically found in Paragraph 8 of the Findings of Fact and Conclusions of Law that the Defendant's stated down payment of $5,000.00 in cash and the $500.00 monthly cash payments to Brenda Babb, his sister, were a façade to create the appearance of consideration. I did not believe that the money was paid by the Defendant or received by Babb, the seller. I found that the Seller of the properties transferred the two

properties to the Defendant to avoid the Plaintiffs' impending judgment and that the Defendant did not pay unto the Seller any consideration for the fraudulent transfer of the two real properties. The Seller and the Defendant, her brother, clearly acted in concert for these illegal purposes of defrauding the Plaintiffs. In these findings, I clearly delineated the factual evidence of collusion between the Seller Babb and the Defendant in this transaction.

It is therefore Ordered that the motion of the Defendant for a new trial is denied. The Special Master's fees and the Court Reporter fees for these hearings shall be taxed against the Defendant.

AND IT IS SO ORDERED.

RALPH STROMAN
Special Master

May 28, 2013
Conway, South Carolina