

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Martin R. Banks, Special Referee

Case No. 2007-CP-18-1794

James T. Judy, Bobby R. Judy
and Kevin Judy,

Respondents,

v.

Ronnie F. Judy, J. Todd Judy,
Ryan C. Judy and Wanda B.
Judy, Defendants,

of whom Ronnie F. Judy is,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING THAT ALL THE ELEMENTS OF THE STATUTE OF ELIZABETH WERE SATISFIED AS TO SET ASIDE THE 1998 AND 2007 CONVEYENCES OF THE APPELLANT?
- II. DID THE TRIAL COURT ERR IN FORMING THE REMEDY FASHIONED AS IT PERTAINS TO THE "REMOTE CONVEYANCES"?
- III. DID THE TRIAL COURT ERR IN AWARDING ATTORNEYS FEES?

Statement of the Case

The case was heard in front of Special Referee Martin R. Banks on July 18, 2011. (R. p. 7) The case was referred to the Special Referee by the Order of the Honorable Edgar W. Dickson on April 16, 2010, after the Master-in-Equity for Dorchester County recused himself from hearing the matter. (R.pp. 1-3).

The Respondents' sought to set aside certain conveyances of real property by Appellant to his sons, J. Todd Judy and Ryan C. Judy, and to restore title to Ronnie Judy under the Statute of Elizabeth, Sections 27-23-10, *et seq.* of the Code of laws of South Carolina for 1976, as amended. (R.pp. 58-62, 71-75). Respondents also sought an award of attorney's fees and costs for the action. The Lis Pendens filed in the case described ten parcels of real property more fully described therein as Parcels "A" through "J", which comprised the lands at issue in the case. (R.pp. 53-57, 76-80).). Respondent sought to set aside two types of conveyances. (R.p. 18). The first type occurred in 2007, which the court refers to as the "recent" conveyances" and the second type occurred in 1998 which the court referred to as the "remote conveyances." (R.pp. 19-21).

Plaintiffs, James T. Judy and Bobby Judy were present and represented by Capers G. (R.p. 7). Barr, III. Defendants, Ronnie F. Judy, J. Todd Judy, and Ryan C. Judy appeared *pro se*. *Id.* Plaintiff, Kevin Judy, and Defendant, Wanda B. Judy, did not appear. *Id.* (Because all parties to this case carry the surname "Judy" they will be referred to from time to time by their first names, for the sake of clarity.)

On December 16, 2011, Special Referee Banks issued an order granting the Respondents' request to set aside Appellant's conveyances to his sons. (R.pp.7-38). The Appellants filed a

motion to reconsider which was heard on January 23, 2012 and was denied in a formal order filed on January 30, 2012. (R.pp. 98-100, 47-51). This appeal follows.

Facts

The case involves members of the Judy Family. Respondents, James T. Judy (James), Bobby Judy (Bobby), Kevin Judy (Kevin) and Appellant, Ronnie F. Judy (Ronnie), are sons of the late Blease Judy (Blease). (R.p. 86) Ronnie is the father of Defendants, J. Todd Judy (Todd) and Ryan C. Judy (Ryan), and is the husband of Wanda B. Judy (Wanda). (R.p.221, lines 17-21) Prior to the instant action, the parties have been in litigation since 2001. The contentious history between the parties has been described in *Judy v. Judy*, 384 S.C. 634, 682 S.E.2d 836 (Ct. App. 2009), and *Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011). The litigation between the members of the family is the result of land disputes relating to conveyances of property that left different brothers with joint half interests of property. For the purposes of this appeal, the history of the land conveyances at issue is set forth.

The first conveyance occurred in 1965 when Blease conveyed approximately 259 acres of farmland to Ronnie. (R.pp. 378-380; Plaintiff's Exhibit 1). The second conveyance occurred in 1966 when Blease conveyed approximately 133 acres of farmland to Ronnie and Bobby. (R.pp. 395-396; Plaintiff's Exhibit 5). Thereafter, in 1979 Ronnie conveyed a ½ interest of the aforementioned 259 acres to James T. Judy. (Rpp. 380-382; Plaintiff's Exhibit 2). The aforementioned "Blease" conveyances came to form, after partition described *infra*, Parcels C – G as set forth in the Respondents Lis Pendens. A third conveyance occurred in 1983 when Vesta Rumph ("Mrs. Rumph") died testate, leaving, *inter alia*, three parcels of real property in Dorchester County to be distributed equally between Ronnie and James. (Rpp. 401-402, 403-

404, 410, 411-413, 414-419; Plaintiff's Exhibits 7, 8, 11, 12, and 13). The three parcels included: (1) a 10.9-acre tract ("10.9-acre Tract"); (2) a 9.29-acre tract, on which the Rumph family homestead stood ("Homestead Tract"); and (3) a 134.71-acre tract, which included an 11-acre, man-made pond ("Pond Tract"). Parcels one (1) and two (2) of the aforementioned "Rumph" conveyances came to form, after partition described *infra*, Parcels A and B as set forth in the Respondents' Lis Pendens. Parcels H, I, and J, as set forth in the Respondents' Lis Pendens, were owned by Appellant exclusive of any estate or joint claim as of 1997. Parcels C - G, as set forth in the Respondents' Lis Pendens, were deeded to Todd in 1998 and Parcels H - J, as set forth in the Respondents' Lis Pendens, were deeded Todd and Ryan, jointly, in 1998. (R.pp 383-390; Trial Exhibits 3 and 3-A). In 2007 Appellant deeded to his son, Todd, Parcels A and B, as set forth in the Respondents' Lis Pendens. (R.pp. 429-434; Trial Exhibit 15). By deed recorded December 31, 2008, Todd deeded to his mother, Wanda, Parcels A and B, as set forth in the Respondents' Lis Pendens. (R.pp. 435-440; Trial Exhibit 16). From July 1983 until October 15, 2001, Ronnie served as personal representative of Mrs. Rumph's estate ("Estate"). (R.p. 239, 373, 447,449).

Parcels A & B

On February 8, 2001, James filed suit in probate court seeking partition of the Estate's property. On February 12, 2001, Ronnie executed a Deed of Distribution in his capacity as personal representative of the Estate granting ownership of the three tracts to himself and James as the heirs. (R.pp. 403-404; Plaintiff's Exhibit 8). On October 15, 2001, the probate court removed Ronnie as personal representative of the Estate and appointed James in his place. (R.p. 409; Plaintiff's Exhibit 10).

In early May 2003, an earthen dam supporting the eleven-acre, man-made pond on the Pond Tract was damaged and the pond drained completely. James again petitioned the probate court to partition the property alleging Ronnie damaged the pond. By order dated January 7, 2004, the probate court granted the requested relief and partitioned the property. (R.pp. 414-419; Plaintiff's Exhibit 13). The probate court awarded ownership of the Pond Tract to James and the 10.9-acre Tract and Homestead Tract to Ronnie. *Id.* These two tracts of land constitute Parcels A and B, respectively. *Id.*

Parcels C, D, & E

James also filed suit in a 2001, in order to partition lands he held jointly with Todd. Master-in-Equity Patrick R. Watts presided over the action captioned *James T. Judy vs. J. Todd Judy*, Case No. 2001-CP-18-122. In August of 2001, Ronnie was dismissed as part of the case because he held no interest in the lands in question. (R.pp. 192 line 21 through 193 line 11). As a result of the action, Master-in-Equity Watts issued an Order on November 15th, 2004 conveying Parcels C, D, and E to Todd (Rpp. 391-393; Plaintiff's Exhibit 4).

Parcels F & G

In 2002, Bobby filed a partition action concerning parcels F and G. In a Title to Real Estate (General Warranty Deed) referring to an action captioned *Bobby Judy v. J. Todd Judy* 02-CP-18-2008, Bobby consented to granting parcels F and G to J. Todd Judy. (Rpp. 397-400; Plaintiff's Exhibit 6).

Parcels H, I, and J

As set forth *supra*, Parcels H, I, and J were owned by Ronnie outright. (R.p. 34, 42, 56).

Challenged Conveyances

On November 16, 1998, Plaintiff Ronnie executed two conveyances, the consideration for each of which was "five dollars, love and affection." (R.pp 383-390; Trial Exhibits 3 and 3-A). By deed recorded in Book 2007, Page 096, Dorchester County Register of Deeds Ronnie conveyed to his son, Todd, his undivided one-half interest in tracts more fully described in the deed as 259 acres, 133 acres, 2.06 acres, 75 acres, 100 acres, 143 acres, and 10.9 acres. (R.pp. 383-386; Plaintiff's Exhibit 3). On the same day, he conveyed to both of his sons, Todd and Ryan jointly, title to tracts of 87.78 acres and 59 acres, by deed recorded in Book 2077, Page 092. (R.pp. 387-390; Plaintiff's Exhibit 3a). The lands described in the two 1998 deeds comprised land that formed, after partitions, Parcels C, D, E, F, G, H, I and J in the Lis Pendens filed with this action. (R.pp. 53-57, 76-80). These parcels were described by Special Referee Banks as the "remote conveyances." (R.p. 20).

In 2007, Ronnie Judy executed a conveyance for the consideration of "five dollars, love and affection." (R.pp. 429-432; Plaintiffs' Exhibit 15). By deed recorded in Book 5844, Page 224, Dorchester County Register of Deeds Ronnie conveyed to his son, Todd, his full interest in tracts more fully described in the deed as 9.29 acres and 10.9 acres. *Id.* The 9.29 acre and 10.9 acre tracts are described as parcels A and B. (R.p. 31). These parcels were described by Special Referee Banks as the "recent conveyances." (R.pp. 19-20). Thereafter, Todd conveyed the same to his mother, Wanda (R.pp. 435-440; Plaintiffs' Exhibit 16).

Judgments/Creditors

On or about July 22, 1997, Judgment was entered in the Dorchester County Court of Common Pleas in favor of Larry Thomas Mills against Ronnie for the sum of \$9,424.00. (R.pp. 334-336; Plaintiffs Exhibit 40, p. 6-8). After a number of post-judgment motions and an appeal, this judgment was satisfied for the amount of \$14,546.49 on December 29, 2000. (R.p. 635; Plaintiff's Exhibit 40, p. 32 and R.p. 372; Defendant's Exhibit 10).

On May 2, 2007, Judgment was awarded on a jury verdict in favor of Respondents, Bobby and Kevin, against Appellant, Ronnie, for the amount of \$37,668.00 by Order of the Dorchester Court of Common Pleas. (R.p. 463; Plaintiff's Exhibit 21) The Judgment was affirmed by the Court of Appeals of South Carolina, and the case was remitted by the Court of Appeals to the Dorchester County Clerk of Court on December 22, 2009. (R.pp. 464-475; Plaintiff's Exhibit 22). This case involved the alleged destruction of a corn crop by Ronnie. *Judy v. Judy*, 384 S.C. 634, 682 S.E.2d 836 (Ct. App. 2009).

On April 9, 2007, the Dorchester Court of Common Pleas conducted a jury trial relating to a civil cause of action filed by James against Ronnie relating to the tort of waste and the destruction of a man made pond. The jury found in favor of James and awarded him \$67,350 actual damages and \$22,650 punitive damages. (R.p. 452; Plaintiff's Exhibit 18). After the court denied Ronnie's post-trial motions, Ronnie appealed to the Court of Appeals. The Court of Appeals found that James's suit for waste was barred on the basis of *res judicata*. *Judy v. Judy*, 383 S.C. 1, 677 S.E.2d 213 (Ct. App. 2009). The South Carolina Supreme Court affirmed this ruling in a separate opinion *Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011) *rehearing denied*.

Standard of Review

An action to set aside conveyances as fraudulent pursuant to the Statute of Elizabeth is an action in equity. *Durham v. Blackard*, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993). In an appeal from an action in equity, tried by a judge alone, the Court may review the entire record and determine facts in accordance with its own view of the preponderance of the evidence. *Id.* Additionally, the Court "may decide questions of law with no particular deference to the [circuit] court." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010). Furthermore, while personal jurisdiction may be waived, subject matter jurisdiction may not be waived. *Eaddy v. Eaddy*, 283 S.C. 582, 584, 324 S.E.2d 70, 72 (1984). Lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal, by a party or by the court. *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653-54 (Ct. App. 1998).

Arguments

I. BECAUSE THE RESPONDENTS HAVE FAILED TO SHOW APPELLANT FAILED TO RETAIN SUFFICIENT PROPERTY TO PAY HIS INDEBTEDNESS OR THAT THE 1998 CONVEYENCES WERE MADE WITH A VIEW TO FUTURE INDEBTEDNESS OR WITH ACTUAL FRAUDULENT INTENT THE TRIAL COURT ERRED IN FINDING THE STATUTE OF ELIZABETH APPLIED.

The Statute of Elizabeth is codified in South Carolina Code Sections 27-23-10, et seq. and provides, in relevant part: "Every...conveyance of land...made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions... must be deemed... to be

clearly and utterly void...". Conveyances may be set aside for both existing creditors as well as subsequent creditors. *Mathis v. Burton*, 319 S.C. 261, 264, 460 S.E.2d 406 (Ct. App. 1995). As for existing creditors, conveyances can be set aside where the transfer was not made on a valuable consideration. *Id.* at 265. No actual intent to hinder or delay creditors must be proven. *Id.* Instead, as a matter of equity, the transfer will be set aside if the Plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the Plaintiff in full - not merely at the time of transfer, but in the final analysis when the creditor seeks to collect his debt. *Mathis v. Burton*, *supra*, 319 S.C. at 264, 265 (citing *Durham v. Blackard*, 313 S.C. 432, 438 S.E.2d 259 (Ct. App. 1993)). For subsequent creditors a conveyance may be set aside when (1) the conveyance was "voluntary," that is, without consideration and (2) the conveyance was made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors. *Mathis v. Burton*, *supra*, 319 S.C. at 265 (citing *Gentry v. Lanneau*, 54 S.C. 514, 32 S.E. 523 (1899); *Parker Peanut Co. v. Felder*, 200 S.C. 203, 20 S.E.2d 716 (1942)). However, in order for subsequent creditors to set aside conveyances, they must show "actual moral fraud" rather than legal fraud. *Gentry v. Lanneau*, 54 S.C. 514, 32 S.E. 523 (1899).

In this case, the Respondents have not met their burden of proof to establish actual moral fraud; therefore the conveyances should not be set aside. Neither party disputes both the recent and remote conveyances were voluntary. (R.p.19) Additionally, neither party disputes Bobby and Kevin became judgment creditors on May 2, 2007 subsequent to the 1998 conveyances. (R.p 193 line 17).

A. Recent Conveyances

The court made an error of law in finding that the recent conveyances should be set aside under the Statute of Elizabeth. The Respondents failed to prove Appellant did not retain sufficient property to pay Appellant's indebtedness in full. While the Appellant may not have real property to satisfy the judgment against him, the Respondents' case in chief demonstrated that there is substantial reason to believe the Appellant has assets sufficient to pay his indebtedness in full. The Respondents demonstrated through the introduction of tax records, evidence of substantial income, the buying of personal and business property, and loans from a bank that the Appellant did in fact retain sufficient property that could be used to pay his indebtedness to the respondents in full. (R.pp. 36, lines 12 - 17, p. 40, lines 14 through p. 42, line 2, p. 48, line 12 through p. 53, line 3, 476-506, 597-618, 619-628; Plaintiff's Exhibits 23 - 27, 39, and 43). Additionally, the Respondents failed to present any evidence indicating they attempted to execute the judgment and the judgment was returned *nulla bona*. Furthermore, the Complaint does not allege the Respondents unsuccessfully attempted to execute the judgment. In order to avail themselves of the protections of the Statute of Elizabeth, and set aside these conveyances, Respondents have to prove that the Appellant did not retain enough real and personal property to pay his indebtedness. Because Respondents failed their burden of proof, Special Referee Banks erred in setting aside the recent conveyances pursuant to the Statute of Elizabeth.

B. Remote Conveyances

The Special Referee Banks erred in finding the remote conveyances should be set aside under the Statute of Elizabeth. The Respondents have failed to prove the remote conveyances was made with a view to future indebtedness or with an actual fraudulent intent to defraud creditors.

The May 2, 2007 Judgment, which is the only surviving judgment for this Statute of Elizabeth claim, was the result of an alleged intentional tort that occurred a minimum of six years after the conveyances the Respondents seek to overturn. (R.p 193 line 17, 326 line 14). At the time of the 1998 conveyances, the Appellant could not have considered that he would be subject to a lawsuit six years later where he would be accused of an intentional tort relating to the destruction of corn crops. *Id.* Because, these acts are so remote in timeframe and are unrelated to one another, the conveyances should not be set aside under the Statute of Elizabeth

Additionally, the conveyances should not be set aside because the Respondents have not shown Ronnie acted with actual moral fraud. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993); *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. *Id.* Beyond a showing of fraud; the Respondents must show actual, moral fraud. *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406 (Ct. App. 1995). Actual fraud consists of deceit, artifice, trick, design, and some direct and active operation of the mind. Ralph King Anderson, Jr. South Carolina Requests to Charge- Civil, 2002, §18-1; see *Wright v. Public Sav. Life Ins. Co.*, 262 S.C. 285, 204 S.E.2d 57 (1974)(fraud assumes so many forms that courts are compelled to content themselves that with few general rules for its discovery and defeat, and allow facts and circumstances peculiar to each case to bear heavily upon conscience and judgment of court or

jury in determining its presence or absence; while it has often been said fraud cannot be precisely defined, the books contain many definitions, such as unfair dealing, the unlawful appropriation of another's property by design). Actual fraud includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another. *Id.*

The Respondents have shown the possibility of a conversation between Ronnie and James relating to the avoidance of a potential judgment and that Ronnie may have had some benefits of ownership. (Rpp. 181, lines 9 through 185, line 7, 112-163; Trial Transcript, p. 80, line 9 through p. 84, line 7; Trial Transcript, testimony of witnesses West, Cantley, Utsey, and Dantzler). However, a speculative 1998 conversation between the parties Ronnie and James is not tantamount to fraud nor does it satisfy all the elements of fraud. Additionally, the facts indicate that Ronnie did not defraud anyone. Ronnie did not avoid the 1997 judgment creditor, and satisfied this judgment in 2000. (R.p. 372, 635; Defendant's Exhibit 10, Plaintiff's Exhibit 40, p. 32). The fact that Ronnie may have enjoyed the benefits of ownership is of no consequence to this action. While Ronnie may have continued to farm the property he already conveyed the Respondents have not shown that the act of farming constitutes actual moral fraud. No clear, cogent, and convincing exists evidence of any fraud or representation.

The Respondents had constructive knowledge of Ronnie's conveyances in 2001 and 2002, when the Respondents were engaged in partitions actions took place. Ronnie's 1998 conveyances are a matter of public record. Additionally, the Respondents demonstrated actual knowledge of these conveyances on the following occasions:

- a) In an action captioned *James T. Judy vs. J. Todd Judy*; Case No. 2001-CP-18-122, as a result of the action, issued an order on November 15, 2004 which conveyed to Todd J. Judy Parcels C,D, and E. (R.pp. 391-394; Plaintiff's Exhibit 4).
- b) In a Title to Real Estate (General Warranty Deed) referring to an action captioned *Bobby Judy v. J. Todd Judy* 02-CP-18-2008, Bobby consented to granting parcels F and G to J. Todd Judy. (R.pp. 397-400; Plaintiff's Exhibit 6).

These actions demonstrate that the Respondents could not have been ignorant of the conveyances, could not have relied on this truthfulness, did not have a right to rely, and did not have consequent and proximate injury. No actual moral fraud exists in this case because the land conveyances did not trick or deceive anyone. The creditor existing in 1997, was paid in full and the Respondents have no reason to assert they have been deceived after participating in these transfers. (R.p. 372, 635; Defendant's Exhibit 10, Plaintiff's Exhibit 40, p. 32).

In short, the Respondents have failed to demonstrate the Appellant has failed to retain assets sufficient to satisfy the judgment such that the conveyances should be overturned pursuant to the Statute of Elizabeth. As to the remote conveyances, the Respondents have failed to show the existence of actual moral fraud or to prove conveyances were done with a view to a future indebtedness. Even if sufficient evidence existed to find actual moral fraud or the conveyances were made with a view to a future indebtedness, which the Appellant asserts there is not, that any such alleged fraud or view to a future indebtedness could not be characterized as fraud pertaining to these Respondents or a view to the indebtedness owed to these Respondents. Public policy prohibits the Respondents from piggy-backing on speculative claims of fraud of another

unrelated creditor. Under Respondents' interpretation of the Statute of Elizabeth, inter vivos transfers will be subject to challenge by subsequent creditors in perpetuity. This interpretation, effects the marketability of title to countless parcels of land. For the foregoing reasons, the ruling of the trial court must be reversed.

II. THE REMEDY FASHIONED BY THE COURT BELOW, AS IT PERTAINS TO THE "REMOTE CONVEYANCES", EXCEEDED THE AUTHORITY OF THE COURT, DEPRIVED THE APPELLANT OF DUE PROCESS, AND IS MANIFESTLY INEQUITABLE.

Even if the Respondent had adequately established its entitlement to void the 1998 conveyances under the Statute of Elizabeth, the court below did not have the authority to fashion the remedy it reached. As the court below noted, "the 1998 conveyances (the 'remote conveyances') are more complex, inasmuch as, succeeding those conveyances, partitions were effected by Master's Deeds and by deeds exchanged by the parties to implement partition orders. Notably, all relevant partition deeds are in evidence before the Court, and the parties to the partition deeds are also parties to this action." (R.p. 22; Order, p. 16). However, the trial court overstepped its authority when it concluded that the appropriate remedy was "to declare, *sua sponte*, that the respective partition deeds that were the product of fraudulent conveyances be deemed reformed, the same as if [Appellant] were a party to the partition actions and putative grantor or grantee, as the case may be, to the partition deeds". *Id.* The court even notes that the consequence of its ruling is to treat the Appellant, a party who admittedly had no interest in the

partition actions concerning the remote conveyances, as if he “were the real party in interest in the partition proceedings”, *nunc pro tunc*. *Id.*

The remedy of subjecting the Appellant, *nunc pro tunc*, to the outcomes reached in partition actions to which he was not a party raises a number of concerns. It implicates the authority of the Court to reach and modify court orders of other courts; orders that have not been appealed from or challenged by appropriate post-judgment motion. It also implicates concerns over due process/jurisdiction inasmuch as the orders subject the Appellant to rulings that he did not participate in and inasmuch as it, *sua sponte*, grants relief not demanded in the Complaint. (R.pp. 108 lines 9-15, 323 lines 2 through 324 line 24). It also implicates the inequity in allowing parties to partition actions, who dealt with the Appellant’s sons as the presumptive owners of the property in accordance with the 1998 conveyances, to later challenge the very conveyances that they relied upon in the partition actions, all after the property had been divided amongst the parties. *Id.*

A. Lack of authority/jurisdiction to reach the outcome set forth in the Order as it pertains to Parcels C – G.

As set forth *supra*, in an action captioned *James T. Judy vs. J. Todd Judy*; Case No. 2001-CP-18-122, the portion of the first 1998 conveyance made by Appellant to J. Todd Judy that created joint ownership between J. Todd Judy and James Judy, resulted in an order that ultimately conveyed to J. Todd Judy Parcels C, D, and E, as described in the Lis Pendens filed by the Respondent. (R.pp.391-395; Plaintiff’s Exhibit 4). Ronnie was dismissed as a party to the case because he held no interest in the lands in question. (R.pp. 287 line 1 through 288 line 19,

323). Similarly, as the result of a partition action captioned *Bobby Judy v. J. Todd Judy*; 02-CP-18-2008, the portion of the first 1998 conveyance made by Appellant to J. Todd Judy that created joint ownership between J. Todd Judy and Bobby Judy, resulted in a deed from Bobby Judy that conveyed to J. Todd Judy Parcels F and G, as described in the Lis Pendens filed by the Respondent. (R.pp. 397-400; Plaintiff's Exhibit 6). Ronnie Judy was not a party in this partition action.

The court below committed reversible error in granting the remedy of subjecting the Appellant, *nunc pro tunc*, to the outcomes reached in partition actions to which he was not a party, because in doing so the court below exceeded its authority to reach and modify court orders of other courts. The law in this regard is clear, "[a] prerequisite for a *nunc pro tunc* order ... is some previous action by the court that is not adequately reflected in its record." *Ex parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (S.C. 2000) citing *Deweese v. Sweeney*, 947 S.W.2d 861 (Tenn. Ct. App. 1996), *app. den'd* (1997); *Simmons v. Atlantic Coast Line R.R. Co.*, 235 F. Supp. 325, 330 (D.S.C. 1964) (*nunc pro tunc* entry cannot be made to serve the office of correcting a decision or of supplying non-action on the part of the court); *Carroll v. Carroll*, 338 S.W.2d 694, 695 (Ky. 1960) ("The error could not be corrected by *nunc pro tunc* order because such an order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, not to correct an error or supply an omission of judicial action."); and 20 Am. Jur. *Courts* § 29 (1995). Moreover, the decree of a court of competent jurisdiction is final and conclusive if not reversed by the appellate court, or set aside or modified by direct proceedings, and cannot be collaterally attacked or modified.

The *Strom* case, *supra*, involved a situation where an attorney, believing his representation had terminated, failed to participate in the case, which was ultimately dismissed, and after the conclusion of the case filed a motion to be relieved of counsel *nunc pro tunc* to the date when he believed representation ended. *Ex parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (S.C. 2000). After some lengthy discussion of the policy reasons for Rule 11 motions as the sole vehicle for being relieved as counsel, the Court went on to conclude that, even if the trial court's order removing the attorney as counsel of record were appropriate under Rule 60, it should not have been granted *nunc pro tunc*. *Id.*, 343 S.C. at 265, 539 S.E.2d at 703. In so concluding the South Carolina Supreme Court held that *nunc pro tunc* entry is not an appropriate vehicle to correct an error or supply an omission of judicial action. *Id.* Even more instructive is the non-binding case of *Simmons v. Atlantic Coast Line R.R. Co.*, 235 F. Supp. 325, 330 (D.S.C. 1964) cited to by the *Strom* Court.

Simmons v. Atlantic Coast Line R.R. Co., 235 F. Supp. 325, 330 (D.S.C. 1964) involved an ineffective probate appointment of an administrator, which ineffective appointment was attempted to be rescued by a *nunc pro tunc* order appointing the administrator. What is of particular import in the *Simmons* case is the determination that the *nunc pro tunc* entry could not correct a decision or fill gaps due to non-action on the part of the court. *Id.* In so concluding, the *Simmons* Court noted that to allow the *nunc pro tunc* order giving efficacy to the appointment would go to the very heart of the lower court's jurisdiction over the matter. *Id.*

Similarly to the above cited cases, the order in the within action purports to correct an error or supply an omission in the partition actions, which errors were, in effect, created by the

order of the court below. Plainly, the trial court recognized that its ruling had the effect of rendering moot the outcomes of the partition actions and, in an effort to rescue the “titles conveyed to the innocent parties in the partition actions” (R.p. 22; Order, p.16), it fashioned a remedy modifying the partition deeds so as to reflect that the Appellant was the real party in interest in the underlying partition actions. And, even more egregiously, the correction the court below attempts to effect is upon the orders and deeds of separate courts in distinct actions, over which the trial court had no jurisdiction and from which no appeal or other post-judgment motion had been taken, and to which the Appellant was not an interested party. If the outcomes of the partition actions relevant to the within action were applied *nunc pro tunc* to the Appellant then the trial court would in effect be subjecting Appellant to the rulings of courts in actions that he was determined to have no interest and to which he did not participate in the outcome. This goes to the heart of the partition courts’ jurisdiction over the parties and has serious implications on denial of due process to the Appellant. Appellant’s interest in Parcels C - G, as revived by the order within, was not adjudicated in the partition actions and the trial court lacks the subject matter jurisdiction to, *sua sponte*, deem the respective partition deeds reformed “as if [Appellant] were a party to the partition actions”. (R.p. 22; Order, p. 16)

B. The outcome set forth in the Order as it pertains to Parcels C – G improperly subjects Appellant to collateral orders in actions where the underlying courts had no jurisdiction over the Appellant and deprives the Appellant of Due Process.

As set forth *supra*, as the result of two separate partition actions, the portions of the first 1998 conveyance made by Appellant to J. Todd Judy creating joint ownership between J. Todd

Judy, James Judy and Bobby Judy, resulted in either Master's Deeds or consent deeds whereby J. Todd Judy came to own Parcels C - G, as described in the Lis Pendens filed by the Respondent. (R.pp.391-395, 397-400; Plaintiff's Exhibit 4, Plaintiff's Exhibit 6). In the first of the partition action Appellant was dismissed for not being an interested party and in the second partition action the Appellant was not a party at all.

Notwithstanding the fact that Appellant was not an interested party in the partition actions affecting Parcels C - G, and notwithstanding the fact that the trial court herein had subject matter jurisdiction only over the Respondents' petition to set aside conveyances made by Appellant, the trial court's order, *sua sponte*, deems the respective partition deeds reformed "as if [Appellant] were a party to the partition actions". (R.p. 22; Order, p. 16). It is hard to imagine in what scenario a court that has jurisdiction only over the matters presently before it could, *sua sponte*, exercise subject matter jurisdiction over outcomes in cases not presently before it and, *sua sponte*, subject a party to personal jurisdiction in cases to which he was not an interested party. Such an outcome is clearly erroneous and has the improper effect of depriving the Appellant of due process in the partition actions and implicitly giving the partition courts personal jurisdiction over Appellant and subject matter jurisdiction over property rights not before those courts.

Moreover, the trial court's order, *sua sponte*, granting relief not prayed for in the Complaint, is not supported by the record in the case and has the effect of denying the Appellant of due process in the within action. In essence, the trial court fashioned a remedy that was not demanded in the complaint, that was not advanced at trial, and that no testimony or evidence was

offered concerning. (Plaintiffs Complaint) Even if granting relief, *sua sponte*, not demanded in the complaint or advanced at trial is within the trial court's discretion, the ruling was in error because there is not a scintilla of evidence offered concerning the outcome. There is no evidence that the outcomes in the partition actions would have been the same had Appellant been a party. There is no evidence that the Appellant had no claims or defenses that might have been asserted in the partition actions had he been a proper party at the time. In short, there is no evidence whatsoever offered by either party in support of the outcome reached. In fact, the only justification given for the *sua sponte* ruling was the trial court's desire to protect "the quality and marketability of the titles conveyed to the innocent parties to this action." (R.p. 22; Order, p. 16). Without a factual basis for the relief granted, the trial was in error to grant, *sua sponte*, the relief granted herein. See *Johnson v. Robinson*, 267 S.C. 660, 230 S.E.2d 815 (1976) (court erred in granting more relief than was sought, in failing to make up a record sufficient to enable review, and in failing to set out facts upon which relief is granted; case remanded for a hearing de novo); *Jones v. Jones*, 270 S.C. 280, 241 S.E.2d 904 (1978) (where complaint does not specifically request relief, but does contain a prayer for 'such other and further relief as to this Court may seem just and proper', trial judge must set forth facts and conclusions of law upon which relief was based; remanded for further consideration). Accordingly, even if the *sua sponte* order of the trial court was within its authority to reach, the matter must, nonetheless, be remanded because the record within is devoid of any evidence concerning the outcome reached.

C. As it pertains to the 1998 conveyances, the outcome reached by the trial court is manifestly inequitable.

As set forth *supra*, the Respondents herein were acutely aware of the 1998 conveyances. There were two separate partition actions wherein it was acknowledged by the Respondents that J. Todd Judy was the just and legal joint owner of lands with James Judy and Bobby Judy as a result of the 1998 conveyances. (R.pp.391-395, 397-400; Plaintiff's Exhibit 4, Plaintiff's Exhibit 6). Appellant was either determined by the partition court to have no interest in the subject property or was not named as a party by the commencing party. James Judy even alleges that he suggested the transfer to Appellant and was aware of the transfer being effected. (R.pp. 181, line 9 through 185 line 7; Transcript of trial, p. 80, line 9 through p. 84, line 7).

The Respondents knew and conducted themselves in accordance with the understanding that the 1998 conveyances were valid and beyond reproach. The Respondents even benefitted from the 1998 conveyances in so much as they resolved partition actions with the grantee of the 1998 conveyances, thus quieting title to the partitioned lands in their names. It is, therefore, manifestly inequitable for the Respondents to subsequently take the position that the conveyances were fraudulent. To allow such an outcome permits the Respondents to acquiesce and condone the conveyances as proper for purposes that benefit them and to simultaneously challenge the propriety of the conveyances when so doing benefits their whim. It is a fundamental maxim of equity that, he who comes into equity must come with clean hands. In the instant action the Respondents knew and conducted themselves in accordance with their understanding that the 1998 conveyances were proper and now seek to advance factual position directly opposite of their prior representations and acts, all to the great detriment of the Appellant. Therefore, the Respondents should be estopped from promoting such an outcome and

the court below was in error in finding that equity favored the outcome as to the 1998 conveyances.

III. BECAUSE NO CONTRACTUAL OR STATUTORY FOUNDATION EXISTED THE TRIAL COURT ERRED WHEN AWARDING ATTORNEYS FEES.

The trial court's order espouses the theory that attorney's fees ought to be awarded in this case pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, Sections 15-36-10, et. seq. Code of Laws of South Carolina for 1976, as amended, Code Section 27-23-30, the South Carolina Code of Civil Procedure ("SCRCP"), principles enunciated by the United States Supreme Court in *Roadway Express, Inc. vs. Piper*, 447 U. S. 752, 100 S.Ct. 2455 (1980).

There is no dispute that the parties in this case did not enter into a contractual relationship. The only evidence that the court finds to support its award of legal fees is the conveyances of Parcels A and B by Ronnie in 2007 conveyance to Todd and Todd's conveyance of the same parcels to Wanda the following year. (R.pp. 24-25; Order, p. 18 - 19).

However, none of these avenues of awarding attorney's fees applies to the present case. Normally attorney fees can only be recovered under contract or by statute. *Baron Data Systems, Inc. vs. Loter*, 297 S.C.382, 377 S.E.2d 296 (1989). There is no common law right to recover attorney's fees. *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). In South Carolina courts interpret statutes that grant the power to award attorney's fees narrowly because these laws were enacted in derogation of the common law. *Id.*

South Carolina Frivolous Civil Proceedings Sanctions Act Section 15-36-20 states that sanctions may be appropriate when a litigant participates in: (a) filing a frivolous pleading, motion, or document ... (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

There is no evidence or findings by the court to support that the Respondents made any frivolous, motions, or arguments. For this reason an award of attorney's fees cannot be supported by the South Carolina Frivolous Civil Proceedings Sanctions Act.

While there are several rules under the SCRPC that allow the award of attorney's fees as sanctions or costs. None of these rules, however, apply to this particular situation. *See* Rule 11, SCRPC (allowing an award of attorney's fees when the court finds the opposing party has filed pleadings that were made in bad faith and/or frivolous); Rules 30 and 37, SCRPC (granting award of attorney's fees as sanctions for discovery abuse); Rule 45, SCRPC (allowing attorney's fees for placing on undue burden on a person responding to a subpoena); Rule 54, SCRPC (allows imposing attorney's fees as costs when authorized by statute); Rule 56, SCRPC (permitting for sanction awarding attorney's fees when affidavits are made in bad faith).

S.C. Code Ann. § 27-23-30 commonly referred to as the Statute of Elizabeth, by its own terms does not refer to attorney's fees. "A statute allowing attorney fees is in derogation of the common law and must be strictly construed." *Dowaliby v. Chambliss*, 344 S.C. 558, 562, 544 S.E.2d 646, 648 (Ct. App. 2001). Because the Statute of Elizabeth does not specifically describe the process of awarding attorney's fees it cannot support the award of attorney's fees.

Likewise, it is improper for the court to rely on the principles enunciated by the United States Supreme Court in the *Roadway Express, Inc. vs. Piper*, 447 U. S. 752, 100 S.Ct. 2455 (1980) to award attorney's. In *Roadway Express* the Court examined the power of the Federal Courts to award attorney's fees pursuant to 28 U.S.C. § 1927, and Federal Rule of Civil Procedure 37 in light of abuses in the discovery process in an employment discrimination case. The Court goes on to describe that there is a bad faith exception to the award of attorney's fees "The bad-faith exception for the award of attorney's fees is not restricted to cases where the action is filed in bad faith. "[B]ad faith' may be found not only in the actions that led to the lawsuit, but also in the conduct of the litigation." *Hall v. Cole*, 412 U.S. 1, 15 (1973).

As previously asserted, there have been no findings by the court that the Appellants engaged in any abuse of the discovery process. Further, the bad faith exception advanced by the Respondents essentially argues that the "bad faith" exception is satisfied by the Appellants fraud in the complained of transfers. The fraud advanced by Respondents is an essential element of their claims and not the foundation of a bad faith exception. Moreover, the conveyances were ineffective to avoid the Respondents action because they were made during the pending action and subject to the protections of the Respondents' Lis Pendens. (See S.C. Code Ann. § 15-11-20 (1976) (any person obtaining an interest in land subject to a lis pendens is bound by all proceedings taken after the filing of the lis pendens to the same extent as if made a party to the action). Bad faith entitling a variance from the normal prohibition on the award of attorney fees in the absence of a contract or statute allowing for recovery is normally bad faith in the nature of frivolous proceedings, vexatious litigation or other misconduct in the litigation (i.e. suborning perjury, intimidating witnesses, bribing officials, etc.). The rule on this is clear and it requires a

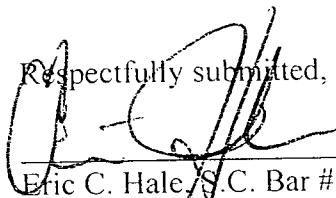
showing of extrinsic fraud in the proceedings. If the alleged fraud in the conveyances were sufficient to award attorney fees then attorney fees would be available in every fraud action, and they clearly are not.

CONCLUSION

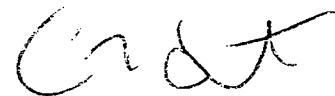
For the reasons stated, this Court should reverse the judgment of the Special Referee and/or remand the case for hearings consistent with the reasons stated.

July 9, 2012

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Martin R. Banks, Special Referee

Case No.: 2007-CP-18-1794

James T. Judy, Bobby R. Judy Respondents,
and Kevin Judy,

vs.

Ronnie F. Judy, J. Todd Judy
Ryan C. Judy and Wanda B.
Judy, Defendants,

of whom Ronnie F. Judy is, ... Appellant

BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Respondents filed their Summons, Lis Pendens and Complaint in the Dorchester County Court of Common Pleas on September 27, 2007, seeking an order of the Court to set aside certain land conveyances alleged to be fraudulent, pursuant to the Statute of Elizabeth, South Carolina Code. Sections 27-23-10, et. seq. The Lis Pendens and Complaint describe ten parcels of real property at issue, designated therein as Parcels "A" through "J". (R. pp. 63-66). The original Defendants were Ronnie, Todd and Ryan Judy, who filed their *pro se* Answer to the Complaint on November 2, 2007. (R. pp. 67-69).

On June 17, 2009, the Court filed its Order permitting Respondents to file their Amended Complaint to add Wanda Judy as a party, because of a conveyance made by Appellant Todd Judy to her after this action had been filed. (R. pp. 435-440). Respondents filed their Amended Complaint on June 22, 2009 (R. p. 71-80), to which Appellants filed their *pro se* Answer on August 18, 2009. (R. pp. 81-83).

On April 27, 2010, the Court filed its Order striking the case from the jury roster and referring the case for trial with finality to the Master in Equity for Dorchester County. (R. pp. 1-4).

On May 23, 2011, the Court referred the case for hearing to the Honorable Martin R. Banks, Master in Equity for Calhoun County, to serve as Special Referee, because the Master in Equity for Dorchester County had recused himself. (R. pp. 5-6).

The case was tried before Judge Banks on July 18, 2011, and who filed a Final Order on December 28, 2011. (R. pp. 7-46). Appellants filed their Motion to Reconsider and Request for New Trial, *pro se*, on December 29, 2011, (R. pp. 98-100), which was denied by Order filed January 25, 2012. (R. pp. 47-51).

Only Ronnie F. Judy has appealed the decision of the Trial Court, in a notice filed on or about February 29, 2012.

STATEMENT OF FACTS

Respondents James T. Judy, Bobby R. Judy and Kevin Judy were judgment creditors of Appellant Ronnie F. Judy ("Ronnie") at the time of the filing of the Complaint in this case¹.

On April 11, 2007, a Dorchester County jury found by clear and convincing evidence that Ronnie Judy had willfully destroyed a pond dam on lands jointly owned by Ronnie and Jimmy Judy (the "Pond Dam case"). The jury awarded actual and punitive damages (R. pp. 441-452; Exhibits 17, 18). Although the Supreme Court ultimately affirmed the reversal of the Pond Dam judgment on *res judicata* grounds (*Judy vs. Judy*, 393 S.C. 160, 712 S.E.2d 408 (S.Ct. 2011)), the findings of the jury remain as relevant evidence of Ronnie's *animus*, which is discussed hereafter, more fully.

On May 2, 2007, a Dorchester County jury found by clear and convincing evidence that Ronnie had willfully destroyed a corn crop on lands of Bobby Judy, by disking it over. (The "Corn Crop case"). The jury awarded actual and punitive damages. (R. pp. 454-463). The Corn Crop case was affirmed by the Court of Appeals (R.p.464-474; *Judy vs. Judy*, 384 S.C.634, 682 S.E.2d 836 (Ct.App. 2009)). The factual findings by the jury in the Corn Crop case are further evidence of Ronnie's *animus*.

The Pond Dam case and the Corn Crop case were first called to trial in Dorchester County Court of Common Pleas on January 29, 2007. Jimmy Judy, Plaintiff in the Pond

¹ The parties, all of whom bear the surname "Judy", will be referred to herein by their first names, in the interests of clarity.

Dam case, appeared on that date with his witnesses. However, the case was continued because Ronnie Judy had been admitted to the hospital. (R. p. 172, lines 5-12).

On February 7, 2007, nine days after the first call of the Pond Dam case for trial, Ronnie Judy signed and recorded a deed conveying his home on a 9.29 acre tract and a nearby 10.9 acre tract to his son, Respondent Todd Judy, for \$5.00, love and affection. (R. pp. 429-434). As previously stated, the Pond Dam case went to trial in April, 2007, and the Corn Crop case went to trial in May, 2007, and in each case a jury held Ronnie Judy liable for actual and punitive damages because of his willful conduct.

The case now before the Court was filed in the Circuit Court on September 27, 2007 against Respondents Ronnie, Todd and Ryan Judy. On December 31, 2008, while the within case was pending, Todd Judy conveyed to Ronnie's wife, Wanda Judy, the same 9.29 and 10.9 acre tracts that Ronnie had conveyed to him the year before. (R. pp. 435-440). At trial, Ronnie testified that, after he conveyed these lands to his son Todd, he "didn't own no more real estate". (R. p. 217, lines 13-16). Ronnie had borrowed \$100,000 on the 9.29 acre home property, "because y'all had filed so many lawsuits against me, Mr. Barr, and I had hired so many lawyers that I spent in excess of \$100,000." (R. p. 221, lines 3-7). Ronnie was vague about who pays the mortgage: "either me or Todd". (R. p. 221, lines 8-14). Further, Ronnie paid Todd no rent (R. p. 220, line 20), and Todd paid the taxes. (R. p. 220, lines 22-23).

From the evidence summarized to this point, it may be fairly concluded that Ronnie Judy harbored significant ill feelings toward his brothers Jimmy and Bobby, so much so that he had deliberately destroyed a pond dam, and a ten acre fish pond that was to become the property of Jimmy, and a thirty acre corn crop that belonged to Bobby.

After suit was filed against him for his wrongdoing, and virtually on the eve of trial, Ronnie transferred out of his name all remaining real property that he owned by conveying it for no consideration to his son Todd. To further obfuscate the trail of conveyances, Todd conveyed Ronnie's home and the 10.9 acre nearby parcel to Ronnie's wife, Wanda. Importantly, neither Todd Judy nor Wanda Judy testified at trial to offer any explanation for the transfers. Ronnie's only explanation was that he was "transferring it back to the rightful owner". (R. p. 217, lines 2-3). Evidence of actual fraudulent intent on the part of Ronnie Judy is overwhelming. But there is more.

Vesta Rumph was an elderly friend of Jimmy and Ronnie Judy who devised her lands to them, jointly, in her Last Will and Testament. Ronnie was named executor in the Will. Mrs. Rumph died in 1984 and Ronnie was appointed Executor. (R. pp. 401-402; Plaintiffs' Exhibit 7). On February 12, 2001, Ronnie recorded a Deed of Distribution, conveying the lands of the Vesta Rumph Estate to Jimmy and to himself (R. pp. 403-404, Plaintiffs' Exhibit 8). Thereafter, however, by deed recorded August 20, 2001, Ronnie purported to convey the same Rumph Estate lands to his sons Todd and Ryan for \$15,000, including the one-half interest he had earlier acknowledged as owned by Jimmy in the Deed of Distribution. (R. pp. 405-408; Plaintiffs' Exhibit 9). By Order signed October 15, 2001, the Probate Judge removed Ronnie as Personal Representative of the Rumph Estate and substituted Jimmy. (R. p. 409; Plaintiffs' Exhibit 10). By orders signed August 16, 2002 and May 29, 2003, the Probate Judge rescinded Ronnie's conveyances to his sons. (R. pp. 410-413; Plaintiffs' Exhibits 11 and 13).

On January 8, 2004, the Probate Judge filed her Order partitioning the lands of the Rumph Estate between Jimmy and Ronnie. (R. pp. 414-424; Plaintiffs' Exhibit 13). In

her Order, the Court found that Ronnie had undertaken to lease the 10 acre fishing pond to a third-party, while a petition for his removal as Personal Representative was pending. (R. pp. 414-424; Plaintiffs' Exhibit 13, R. p. 415, Paragraph 4). The Court found that the pond lease was null and void (R. p. 419, Paragraph 1). She awarded to Ronnie the 9.29 acre and 10.9 acre tracts, which included the home of Mrs. Rumph, and to Jimmy she awarded 134 acres of land.

The Probate Court record therefore presents further evidence of Ronnie's ill will. Although Ronnie had acknowledged Jimmy's ownership of a one-half interest in the lands of the Rumph Estate, Ronnie attempted to sell the same lands to his sons for \$15,000.00, even after having recorded the Deed of Distribution. That the \$15,000.00 consideration recited in the deed to Todd and Ryan Judy was insufficient, is manifest. Ronnie testified that Jimmy had later sold his 134 acre tract, after the Rumph matter was concluded, for a sum in excess of one million dollars. (R. p. 238, lines 11-14; R. p 257 line 12- p. 258, line 18).

At trial, Ronnie testified that, because he and Jimmy could not agree on the distribution of the Vesta Rumph Estate and since he had the sole discretion to sell, "I sold the sucker". (R. p. 257, lines 15-21) Ronnie further testified that he took bids on the Vesta Rumph lands and that Todd and Ryan were "high bidder on it". (R. p. 258, lines 9-10). And as to who else bid on it, Ronnie could not recall the name of any other person. (R. p. 258, lines 11-15).

Accordingly, Ronnie's conduct involving the Rumph Estate property is further evidence of Ronnie's actual fraudulent intent in conveying lands with the intent to evade creditors. The evidence does not end with the Rumph Estate matter, however.

In 1998, Ronnie owned one-half interests in lands totaling in excess of 722 acres in Dorchester County. (R. pp. 383-386, Plaintiffs' Exhibit 3). In 1998, Ronnie owned, outright, lands in Dorchester County totaling in excess of 147 acres. (R. pp. 387-390, Plaintiffs' Exhibit 3-A). At that time, in 1998, Ronnie and Jimmy were on good terms with each other. (R. p. 180, lines 18-23). At trial, Jimmy testified that in 1997 or 1998 he had recounted to Ronnie the advice he had received from his divorce lawyer to convey out of his name the lands that he had inherited from his father, because of his pending divorce. Jimmy related that advice to Ronnie. (R. p. 181, line 9- p. 182, line 3). At the time, Ronnie was engaged in legal disputes, himself. Ronnie had been sued by Larry Mills. (R. p. 181 line 4-p. 184, line 4; R. pp. 629-681, Plaintiffs' Exhibit 40), and he was also engaged in a dispute about a combine that could have exposed him to a \$10,000 claim. (R. p. 184, lines 5-22). Jimmy testified that Ronnie told him that he intended to transfer his property to his boys, because of these threatened liabilities (R. p. 184, line 18- p. 185, line 7). Accordingly, on November 16, 1998, Ronnie conveyed his interests in all of his lands to his sons Todd and Ryan, in two separate deeds. (R. p. 185, lines 4-7; R. pp. 383-390, Plaintiffs' Exhibits 3 and 3-A). The conveyances purported to transfer all of Ronnie's interests in lands in excess of 869 acres, for \$5.00, love and affection.

On the same date in 1998 that he conveyed all of his lands to Todd and Ryan, Ronnie also transferred to them all of his farm equipment. (R. p. 218 line 25 to R. p. 219, line 13; R. p. 596, Plaintiffs' Exhibit 38).

Ronnie's conveyances of his lands and equipment to his sons was nothing more than a sham. Although Ronnie purported to have divested himself of significant land

ownership with the 1998 conveyances, and with total ownership of land with his 2007 conveyance, he nevertheless retained all control and benefits of ownership of the lands.

On February 7, 2000, Ronnie signed a credit application with Meherrin Agricultural and Chemical Company in Bowman, in which he falsely represented that he owned 554 acres and that he farmed 250 acres of land. (R. p. 116, lines 18-24). Meherrin's manager testified that, although he had seen Todd and Ryan, he had only done business with Ronnie. (R. p. 113, lines 1-21; Plaintiffs' Exhibit 44). Meherrin obtained Judgment against Ronnie on December 17, 2008 for \$27,295.33 on Ronnie's unpaid account. (R. p. 117, lines 17-24; Plaintiffs' Exhibit 42; R. pp. 698-709).

The Meherrin credit application exhibit also reflects substantial transactions with Ronnie Judy for the period from February 23, 2000 to April 30, 2007. (R. pp. 710-714; Plaintiffs' Exhibit 44).

Ronnie transacted business in his name with Holly Hill Farm Center, another supplier of fertilizer, chemicals and seed, with whom Ronnie apparently did business after falling out with Meherrin. Holly Hill's manager, David Cantley, testified that he did business with Ronnie only, and never with Todd or Ryan, although Ronnie occasionally directed that invoices be billed in Ryan's name. The total of invoices with Holly Hill for 2008 and 2009 were \$24,424.53. (R. p.124, line 13-p. 126, line 3; Plaintiffs' Exhibit "F"; R. pp. 715-723).

On January 20, 2006, Ronnie signed a Personal Financial Statement for The Citizen's Bank in St. George, on which he represented his net worth to be \$1,309,540.00 including real estate valued at \$1,075,000.00. On the statement, Ronnie detailed the real estate as including his home at 1872 Sandridge (the 9.29 acre parcel that he later

conveyed to Todd in 2007), and 143 acres, which is listed as jointly owned with Todd. However, on the statement Ronnie represents that he owned an outright one-half interest in 257 acres and 168 acres. (R. pp. 619-628; Plaintiffs' Exhibit 39-A). Notably, the 257 acre and 168 acre tracts are those that had been conveyed to Todd in 1998. (R. pp. 383-386; Plaintiffs' Exhibit 3-A). On August 31, 2006, Ronnie borrowed \$100,000 from The Citizen's Bank, based upon the financial statement.

Ronnie's testimony at trial contrasts starkly with the representations on the financial statement and credit application that he filed with The Citizen's Bank in 2006. Ronnie testified that, after conveying the 9.29 acre home place and the nearby 10.9 acre tract to Todd in 2007, he "didn't own no more real estate." (R. p. 217, lines 13-16).

Ronnie's tax returns for 2005 through 2008 reflect that he reported a total farm income of \$128,430.00, and \$23,989.00 from timber sales for 2007 and 2008. This, after he purportedly "owned no more real estate". Farm expenses for the same period on Ronnie's return were \$216,799.00. (R. pp. 476-514; Plaintiffs' Exhibits 23, 24, 25, 26 & 27). In contrast, Todd's tax returns showed only a nominal \$100.00 per year of farm income for the same period. (R. pp. 515-568; Plaintiffs' Exhibits 28, 29, 30 & 31). The only tax return for Ryan in evidence was for 2008 in which he showed farm income of \$90,536, against expenses of \$95,081.00. It is noteworthy that Ryan's 2008 return was filed after the within case was pending. (R. pp. 569-595; Plaintiffs' Exhibit 37).

The tax returns in evidence and the testimony of Barbara Dantzler, the accountant, are further evidence that Ronnie Judy retained the benefits of owning the lands that he had purportedly conveyed to his sons.

Ronnie also received payments from the U. S. Department of Agriculture for farm subsidies for the period 1995 through 2006 totaling \$50,111.00 (R. p. 241, line 20-R. p. 242, line 23).

Ronnie engaged in the purchase and sale of farm equipment (R. p. 244, line 23-p. 246, line 3). Although he has farm equipment "all over the place" on the 9.29 acres on which he lives, Ronnie claimed the equipment to be owned by Todd and Ryan. (R. p. 246, line 4-p. 247, line 1). He transacted purchase and sale of livestock, but again claimed that it was all in the names of his sons. (R. p. 250, line 23-p. 253, line 3).

Ronnie transacted business with Weathers Farm Supply in his own name, because his sons did not have an account there. (R. p. 253, lines 3-17). He also transacted with Farmer's Milling in Holly Hill, selling crops. Ronnie had been "doing business with them all them years and they was unaware that Todd and Ryan took over the farm". Checks from Farmer's Milling were paid to Ronnie but "some of it went in to Todd and Ryan's farm account". (R. p. 253, line 18-p. 254, line 24).

STANDARD OF REVIEW

An action to set aside a transfer as fraudulent under the Statute of Elizabeth is an action in equity. *Albertson vs. Robinson*, 371 S.C.311, 638 S.E.2d 81 (Ct. App. 2007); *Future Group II vs. Nationsbank*, 324 S.C. 89, 97 n.6, 478 S.E.2d 45, 49 n.6. On appeal, the Court of Appeals has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Albertson vs. Robinson*, *supra*; *Pinckney vs. Warren*, 344 S.C. 382, 387, 544 S.E.2d. 620, 623 (2001).

(Nothing further on this page)

ARGUMENT I

BECAUSE APPELLANT'S BRIEF FAILS TO COMPLY WITH RULE 208, SOUTH CAROLINA APPELLATE COURT RULES, ALL OR AT LEAST A PORTION OF HIS APPEAL ARGUMENTS SHOULD BE DISMISSED

A. Ronnie's Argument Does Not Conform With Rule 208(b)(4) SCACR.

In his Designation of Matters to be Included in the Record on Appeal, Appellant designates the entirety of the recorded transcript of the proceedings in the trial "due to the standard of review". However, in Appellant's Brief the references to the actual transcript are scant, at best.

Rule 208 (b)(4) of the Appellate Court Rules requires that "The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal...to support the salient facts alleged." The Rule further requires that the references should be to page and line number of the transcript.

The transcript of the trial testimony in this case comprises two hundred and eighteen pages. Although Appellant makes reference to trial exhibits, he does not make a single reference to any testimony in his Statement of Facts.

In his Argument on his Question 1, although he asserts that "Respondents have not met their burden of proof", Appellant makes reference to only fourteen pages of the transcript in any direct sense, although he does refer, but only generally, to the entire testimony of four witnesses. (West, Cantley, Utsy, Dantzler. Appellant Brief at page 11).

In his Argument on his Question 2, Appellant refers to five pages of the transcript (Brief, Page 20), although he refers to the same pages as were cited in Argument I.

No references are made to the transcript in Argument III.

Appellant's Argument 3, attacking the remedy invoked by the Trial Court, although citing case law relating to court orders, *nunc pro tunc*, fails to cite or argue authorities why the Trial Court erred in reforming the partition deeds in Appellant's chain of title. Instead, Appellant focuses upon the inapplicable argument that the Trial Court's Order was an Order "*nunc pro tunc*".

Having failed to cite any appropriate supporting authority, Argument III should be dismissed. *Bryson v. Bryson*, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008). (An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a Brief, but not supported by authority. 378 S.C. at 510, citing *Historic Charleston Holdings, LLC vs. Mallon*, 365 S.C. 524, 617 S.E.2d 388 (Ct. App. 2005)).

ARGUMENT II

BECAUSE APPELLANT ACTED WITH ACTUAL MORAL FRAUD, THE TRIAL COURT CORRECTLY SET ASIDE THE TRANSFERS

A. Introduction: The Law of Fraudulent Conveyances; Actual Fraud and Constructive Fraud.

It is a basic proposition of the law of fraudulent conveyances that a transfer of property will be set aside where it is made by the grantor with the actual intent of defrauding his creditors, where the intent is imputable to the grantee. *Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc.*, 331 S.C. 466, 470, 498 S.E.2d 858 (S.Ct. 1998). Moreover, where transfers to members of the family are attacked as fraudulent, either upon the ground of actual fraud or on account of their voluntary character, the law imposes a burden upon the transferee to establish both a valuable consideration and the *bona fides* of the transaction by clear and convincing testimony.

Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc., supra, 331 S.C. 471; *Gardner v. Kirven*, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937).

Even where no actual fraud is found, a Court of Equity may find constructive fraud as a basis to set aside a voluntary conveyance, based upon circumstantial evidence. South Carolina courts have held that if (1) a grantor is indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary – that is, without consideration; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the creditor, then a constructive “fraud” has been proved, and the transfer is deemed to be fraudulent under the Statute of Elizabeth. *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406 (Ct.App. 1995). Importantly for the purposes of the instant appeal, and as will later be discussed, the failure of the grantor to retain assets is an element only in the circumstantial case of constructive fraud, in which the legal fiction is applied to find constructive fraud. That is to say, where there is no evidence or finding of actual fraudulent intent, but instead the court relies upon the circumstantial elements discussed above from *Mathis v. Burton*, then a necessary element of that case is the failure of the debtor to retain property. However, where the evidence and the findings of the court show “actual moral fraud” it matters not what assets are or are not retained by the debtor, the conveyance must be struck down as fraudulent. *Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc., supra*.

The requisite state of “fraud” necessary to sustain a finding of “actual fraud” under the Statute of Elizabeth has been called by many names. In *Mathis v. Burton, supra*, it is said to be “‘actual moral fraud’, rather than legal fraud”, citing *Gentry v.*

Lanneau 54 S.C. 514, 32 S.E. 523 (1899) and *Jackson vs. Plyler* 38 S.C. 496, 17 S.E. 255 (1893).

The black letter distinction between “actual moral fraud” and “legal fraud” is this: “Moral Fraud” is a fraud which affects the conscience, and it is deemed to exist where there is a corrupt motive present, or a dishonest purpose in making a misrepresentation. “Legal Fraud” is merely another name for constructive fraud. 37 *CJS Fraud, Section 3*. South Carolina Courts have held that the presence or absence of an intent to deceive or actual dishonesty of purpose, distinguishes actual fraud from constructive fraud. *Designer Showrooms, Inc. vs. Kelly*, 304 S.C. 478, 405 S.E.2d 417, (Ct.App. 1991).

B. Because Appellant Acted with Actual Moral Fraud, the Trial Court Correctly Set Aside the Transfers.

The evidence of Ronnie Judy’s fraudulent intent to remove his property from the reach of his creditors is abundant and clear. In the first place, Ronnie declared to his brother Jimmy in 1998 that he was conveying his lands to his sons for the expressed purpose, and with the intent, to protect the lands from the reach of the claims of Larry Mills and the anticipated claim by the owner of the combine he had destroyed. On the same day in 1998 that Ronnie conveyed his interests in land, he also transferred to his sons “all farm equipment, including combines, tractors, trucks, and all equipment relating to farming”, for a consideration of “\$5.00 and other consideration”. (R. p. 596). Neither Ronnie, Todd, nor Ryan offered any testimony as to what “further consideration” supported the transfer of Ronnie’s farm equipment.

That the transfers were not *bona fide* is proved by what happened afterwards. Ronnie retained the full use, control and benefits of the lands and farming equipment and

of the farming operations, and its revenues, from 1998 to the date of trial in this case. Likewise, Ronnie retained all timber proceeds. Yet, his lands and his property and equipment remained titled in the names of his sons. The conveyance to his sons of his properties was nothing more than a charade, because Ronnie retained all rights and benefits of ownership.

The evidence in the record shows that Todd and Ryan Judy received no significant benefits from farm or timbering operations, except for 2008 after this case was commenced. Instead, the lion's share of all revenue went to Ronnie. This is shown on his tax returns in the record, as well as the reports from The United States Department of Agriculture reflecting the many crop allowances that he received.

Even after the Mills Judgment had been satisfied, and after the combine claim had lapsed, Ronnie did not restore title to his name, believing, Respondents contend, that he could thereafter act with impunity in his contractual decisions and, significantly, for his torts.

As proof of this, the vendors, suppliers, and buyers for the farming operation testified that they did all business with Ronnie, and not with Todd or Ryan. Although he no longer held title to the lands, Ronnie deducted the *ad valorem* property taxes on the farm income schedules of his income tax returns. Ronnie falsely represented to farm suppliers that he owned lands, knowing full well that they had been transferred to his sons in 1998. Ronnie falsely represented the same thing to The Citizens Bank in St. George in order to qualify for a loan. The loan was to pay lawyers fees, "because y'all have filed so many lawsuits against me". (R. p. 221, lines 3-7).

After Ronnie and Jimmy inherited lands from Vesta Rumph, Ronnie did everything in his power to deny the lands and their value to Jimmy. He purported to sell the Estate lands to Todd and Ryan for \$15,000, even after having recorded a Deed of Distribution acknowledging that the lands were jointly owned with Jimmy. Ronnie attempted to lease to a third party the fishing pond destined for Jimmy. Both the conveyances to his sons and the lease of the pond were set aside by the Probate Judge.

Then, after his previous delicts had been set aside by the Probate Court, Ronnie maliciously destroyed the fishing pond, an act determined by a Dorchester County jury by clear and convincing evidence. Not six weeks later, Ronnie maliciously destroyed a 30 acre corn crop on Bobby's land, another act found by a Dorchester County jury by clear and convincing evidence.

Ronnie's acts of selling the Rumph lands to his sons, leasing the pond, destroying the pond dam, and destroying the corn crop, were brazen in the extreme. Not only did they prove the ill will and malice that Ronnie held for Jimmy and Bobby, but the acts also proved that Ronnie believed that he could act with impunity, believing he was "judgment proof" and able to act without risk that he would lose anything.

C. The Grantees Failed to Carry Their Burden of Proving the *Bona Fides* of the Transfers. Neither Todd nor Ryan nor Wanda Judy, the grantees, attempted to explain the transfers or to prove their *bona fides* at trial. It was clearly their burden to justify the conveyances by clear and convincing evidence. *Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc., supra*. They did not even attempt that. It would seem that the grantees, Todd, Ryan and Wanda, would have the greatest interest in retaining title to the lands that Ronnie had given them. However, not only did they not

testify at trial to justify the *bona fides* of the transfers, they have not even appealed the Trial Court's decisions. Ronnie is the only appellant.

To the extent that, in this appeal from a question in equity this Court may review the entire record to determine facts in accordance with its own view of the preponderance of the evidence, logic supports the conclusion that if Todd, Ryan and Wanda had truly believed that the conveyances to them were *bona fide*, and not fraudulent, they would have said so in court. If they truly believed the lands were theirs, and entertained any expectation of enjoying the beneficial interests for themselves, rather than for Ronnie, they would have testified. They would have appealed the Trial Court's decision to this Court. However, they were silent; and they are silent still.

The record shows that Ronnie was the spokesman for the Defendants at trial. He was the spokesman for, and he controls, the land and the timbering and farming operations. He is the sole party prosecuting this appeal.

D. Appellant Argues the Wrong Fraud Standard. The presence or absence of an intent to deceive, or actual dishonesty of purpose distinguishes actual fraud from constructive fraud. *Designer Show Rooms, Inc. vs. Kelly, supra*; 37 CJS: *Fraud Sec. 3*. Ronnie Judy's dishonesty of purpose is abundantly clear, beginning in 1998 and continuing through the administration of the Rumph Estate and the transfer of the home place to Todd in 2007. Ronnie Judy's schemes and pattern of conduct reflect a dishonesty of purpose to render himself "judgment proof", in order to avoid claims such as those reduced to judgment by Jimmy and Bobby Judy, and that of Meherrin Agricultural and Chemical Company, and others who did not appear in this record.

Ronnie's appeal applies the wrong Standard of Fraud. Ronnie argues that Respondents should have been held to the standard of proof required for a claim of fraudulent misrepresentation, which entails proof of the nine elements of fraud traditionally set forth in the cases. He cites *Ardis vs. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct.App. 1993) and *King v. Hartsford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App. 1984). The standard argued by Ronnie is not applicable in a case to set aside a conveyance for fraud under the Statute of Elizabeth.

"Fraud is a generic term embracing all the multifarious means which human ingenuity can devise and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth." 37 CJS *Fraud*, Section 1. "It has been said that there can be no all embracing definition of 'fraud' but each case must be considered upon its own facts. The term 'fraud' is a generic one which is used in various senses and fraud assumes so many different degrees and forms that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily on the conscience and judgment of the Court or jury in determining its presence or absence." 37 Am. Jur. 2nd *Fraud*, Section 1.

The fraud standard argued by Ronnie is that applicable to a cause of action for fraudulent misrepresentation. However, the proof elements required to sustain a claim for fraudulent misrepresentation, a legal tort, are not the same as required to sustain an equitable claim to set aside a fraudulent conveyance because of "actual moral fraud" or "constructive fraud". As argued previously in this Brief, the requisite actual fraud that must be proved to set aside a conveyance is simply the intent to make the conveyance in

order to avoid a creditor's claim. More specifically, the cases say that a conveyance is fraudulent if made "with the view to hinder and delay creditors, by putting the property beyond the reach of creditors." *Walker, Evans and Cogswell v. Bollmann Brothers*, 22 S.C. 512 (1885). A conveyance is fraudulent if made "with a view to future indebtedness". *Jackson v. Plyler, supra*; *Gentry v. Lanneau, supra*. The requisite fraud has also been described as "that which is made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantors to defraud creditors". *Mathis v. Burton, supra*.

In no case of fraudulent conveyance has a court in South Carolina required that there be proof of the nine elements of fraudulent misrepresentation, as argued by Ronnie. In point of fact, the essence of a fraudulent conveyance claim is that there is no "misrepresentation" by the grantor, at all. Typically, and as occurred in this case, the conveyance is a unilateral act performed by the grantor without disclosure or representation whatsoever to the creditor. The touchstone of a fraudulent conveyance is "actual moral fraud"; that the act be accomplished with a corrupt, dishonest purpose and intent to deceive. Actual dishonesty of purpose constitutes actual fraud. *Designer Show Rooms, Inc. v. Kelly, supra*.

Another perspective of this argument may be gleaned from the proposition that a fraudulent conveyance claim may be made by subsequent creditors. *c.f., Mathis v. Burton, supra*. To the extent that subsequent creditors cannot be known to the grantor at the time of the fraudulent conveyance, it would be impossible that a fraudulent conveyance claim must be based upon any "misrepresentation", or that there must be

evidence of the creditor's reliance. A grantor could not possibly make a representation to a creditor who does not yet exist.

E. Ronnie Judy Divested Himself of all Property Upon Which a Judgment or Creditor Could Levy.

In his brief, Ronnie argues that Jimmy, Bobby and Kevin failed to prove that he did not retain sufficient property to pay his indebtedness in full. The principal position of Respondents in response to that argument is that such proof was not necessary, in light of the manifest evidence of Ronnie's actual fraudulent intent as discussed above. Proof of failure to retain sufficient property is not a required element of the claim, where the evidence proves the grantor acted with actual fraudulent intent. *Windsor Properties, Inc. v. Dolphin Head Construction Company, Inc., supra*.

As part of this argument, Ronnie suggests that Respondents themselves proved that Ronnie possessed "assets", through the introduction of tax records, evidence of Ronnie's receipt of substantial income, evidence of the buying of personal and business property, and evidence of a loan from a bank. The argument is naïve, at best.

Ronnie does not seriously dispute that he conveyed away all of his real property, as discussed previously in this Brief, or that he had given all of his farm equipment to Todd and Ryan in 1998. Beyond that, the record is replete with testimony from Ronnie that "everything belonged to Todd and Ryan." For example:

1. When asked whether it is correct that Ronnie conveyed the 9.29 home site and the 10.9 acres to Todd in 2007 his response was, "I was transferring it back to the rightful owner". (R. p. 217, lines 2-3).

2. When asked whether, after conveying the land to Todd in 2007 he owned no more real estate, Ronnie answered. "Yes, sir, because it wasn't mine". (R. p. 217, lines 17-21).

3. When asked about his purchases of equipment from Godley Auction Company, he responded, "I bought (it) for Ryan and Todd". (R. p. 244, line 23).

4. When asked about the equipment he stores on his 9.29 acre home site "all over the place" Ronnie answered that the equipment belonged to Todd and Ryan. This included equipment he had purchased from Godley Auction Co. (R. p. 246, lines 4-21).

5. Ronnie insists that the equipment belonged to Todd and Ryan, even though the invoices were made out to him, "because when I go to the sale I didn't have Todd and them's checks. So we went to the bank and switched over". (R. p. 246, line 22-p.247, line 1).

6. Ronnie testified that on a specific invoice he bought parts for a John Deere 3020 tractor and although the invoice was in his name, he bought the parts for Todd and Ryan. (R. p. 247, lines 5-21).

7. Ronnie purchased additional equipment for \$5,490.00 on June 28, 2008. "That was (for) Judy Farms. Todd and Ryan." (R. p. 247, line 25-p. 248, line 2).

8. Ronnie purchased a caterpillar motor grader on May 29, 2009 and wrote a check for \$10,500.00 but "matter of fact, Todd has got a mortgage up at Citizen's Bank for \$10,000.00 on that." (R. p. 248, lines 3-11).

9. Ronnie sold soy beans to Carolina Soya, and payment was made to "Ronnie Judy, 1872 Sandridge Road". But, according to Ronnie, "Money was deposited in Ryan or Todd Judy's farm account". (R. p. 248, line 15-p. 249, line 14).

10. Ronnie admitted that in his deposition he had testified he was not farming, but the boys were farming and all he did was help them with the fences. To which Ronnie responded at trial, "I help with the maintenance". (R. p. 251, lines 12-20).

11. Ronnie sold livestock, but testified that "Just because the checks were made out to me, I deposited the money in their (Todd and Ryan's) farm account out of that". (R. p. 251, line 17-p. 252, line 25).

12. Ronnie admitted that Farmers Milling & Supply recorded all of its transactions with him: "Well I been doing business with them all them years and they was unaware that Todd and Ryan took over the farm". (R. p. 253, line 18-p. 254, line 16). However, Ronnie testified as to the Farmers Milling payments "we went to the bank and some of it went into Todd and Ryan's farm account". (R. p. 254, lines 20-24).

13. Ronnie testified that he gave lands to his sons in 1998 because it was what his daddy wanted him to do, a family tradition. When questioned whether he continued to farm the lands he responded "I helped". (R. p. 274, lines 10-18).

Accordingly, far from Respondents proving that Ronnie possesses tangible, attachable property upon which a judgment creditor might levy, Ronnie has dodged that issue at every turn, steadfastly claiming that everything belongs to Todd and Ryan.

ARGUMENT III

THE REMEDY FASHIONED BY THE TRIAL COURT WAS CLEARLY WITHIN ITS EQUITABLE POWERS

A. Appellant's Attack upon the Remedy Fashioned by the Trial Court as an Improper *Nunc Pro Tunc* Order is Without Foundation.

In its Order, the Trial Court clearly characterizes its remedial findings and conclusions as reformatory. For the purposes of making clear the Court's intentions in the

record chains of title to the properties at issue, the Trial Judge declared that the partition deeds to Todd and Ryan Judy were deemed to be reformed, “the same as if Ronnie Judy were a party to the partition actions and putative grantor or grantee, as the case may be, to the partition deeds; so that the public records of Dorchester County should reflect the partitioned conveyances to have been in the name of and for the benefit of Ronnie F. Judy, rather than for Todd Judy and Ryan Judy. Ronnie F. Judy was the real party in interest in the partition proceedings by reason of his antecedent fraudulent conveyances”. (R. p. 22, Court Order). The Trial Court further directed that its Final Order be recorded with the Dorchester County Register of Deeds to be indexed in the grantor’s index for deeds under the names, “Ronnie F. Judy”, “J. Todd Judy”, “Ryan C. Judy”, and “Wanda B. Judy”. (R. p. 29, Court Order).

The Trial Court cited ample authority for its reformation of the deeds:

“South Carolina courts have held that ‘the reformation of written contracts for fraud or mistake is an ordinary head of equity jurisprudence’, meaning a distinct branch of equity jurisprudence. *Jumper vs. Queen Mab Lumber Co.*, 115 S.C. 452, 106 S. E. 473 (1921), citing *Moffett vs. Rochester*, 178 U. S. 373, 20 S.Ct. 957 (1900). Our courts have likewise recited the proposition that fraud constitutes a basis for a Court of Equity to reform an instrument. *Groce vs. Benson*, 168 S.C. 145, 167 S. E. 151 (1933); *Aiken Petroleum, Co. vs. Natural Petroleum Underwriters, etc.*, 207 S. C. 236, 36 S.E.2nd 380 (1945). Accordingly, I conclude that the mechanism to best implement the Court’s previous findings that the 1998 conveyances by Ronnie Judy were fraudulent is to reform the partition conveyances that

putatively named Todd Judy and Ryan Judy as grantees in the partition deeds, so that Ronnie Judy is deemed to have been a grantee of the partition deeds. The intention of this ruling is to restore to Ronnie Judy the same interests in the lands that were partitioned, as if he had originally been a named party to the partition actions and deeds.” (R. p. 22-23, Court Order).

In this appeal, Ronnie makes no attempt to argue that the Court erred in reforming the deeds, or that the Court did not have authority to do so. Instead Ronnie seeks to mischaracterize the Court’s actions as an improper order, *nunc pro tunc*, and then bases his entire argument upon that flawed premise. The Court’s Order is not an order, *nunc pro tunc*, at all. The Court’s Order affects deeds to real property by deeming them reformed, and does not purport to affect any prior order of the court.

The Latin phrase, *nunc pro tunc*, is merely descriptive of the inherent power of a court to make its records speak the truth, that is to say, to record that which was actually done, but omitted to be recorded. *Simmons v. Atlantic Coastline Railroad Company*, 235 F. Supp. 325 (U.S. Dist. Ct. 1964); citing *ABC Packard v. General Motors Corp.* 275 F.2d 63 (Ninth Circuit 1960). A *nunc pro tunc* order can only be used to place in the record evidence of judicial action that has actually taken place. *Ex parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (S.Ct. 2000).

Nothing of the sort happened in this case. Here the Trial Court did not characterize its order as *nunc pro tunc* with respect to anything. Clearly, the Trial Court did not attempt to alter, modify, or clarify any prior order of any court, or to rule “now for then” (the literal meaning of the Latin phrase) what the partition court had intended but not ruled. Rather, the Trial Judge reformed the deeds in accordance with its findings

of fraud, based upon the evidence before it. The expressed purposes for the Court's rulings about reformation was to make clear on the records of the Dorchester County Register of Deeds, and in the respective record chains of title, the reasons why title was restored to Ronnie Judy, vesting in him complete ownership of lands in which he had formerly owned only a fractional one half interest.

If there is any error in the Court's ruling with respect to its declaration of intent to reform the deeds, which is certainly not conceded, particularly since the Appellant did not argue that it was, such error should surely be harmless because the Court's findings were made solely to clarify the record chains of title.

B. The Trial Court Acted Within its Equitable Powers.

Ronnie does not argue that the Trial Court committed error in reforming the deeds, or in expressing its intentions to do so. Neither does Ronnie argue that the authorities cited by the Trial Court to support reformation of documents by Courts of Equity, are in error. In the first place, not having adequately briefed the issue responsively to the Trial Court's Order, Ronnie's argument should be deemed abandoned. *Bryson v. Bryson*, 378 S.C. 502, 662 S.E.2d 611 (Ct.App. 2008). (An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a Brief but not supported by authority. 378 S.C. at 510, citing *Historic Charleston Holdings, LLC vs. Mallon* 365 S.C. 524, 533 n. 7, 617 S.E.2d 388, 393, n. 7 (Ct.App. 2005)).

In the second place, the reformation of deeds is a well recognized power of a Court of Equity. Citing the Supreme Court of the United States, South Carolina Courts have held that "the reformation of written contracts for fraud or mistake is an ordinary

head of equity jurisdiction.” *Jumper vs. Queen Mab Lumber Co.*, 115 S.C. 452, 106 S.E. 473 (1921), citing *Moffett vs. Rochester*, 178 U.S. 373, 20 S.Ct. 957 (1900). In *Groce vs. Benson*, 168 S.C. 145, 167 S.E. 151 (1933), a case to reform a deed, the South Carolina Supreme Court acknowledged the authority of a court of equity to reform an instrument based on fraud or mistake; although the deed in that case was not reformed. In *Aiken Petroleum Co. v. National Petroleum Underwriters*, 207 S.C. 236, 36 S.E.2d 380 (1945), our Supreme Court affirmed the Trial Court’s reformation of an insurance policy. There, the Supreme Court held: “It is the law of this State, and appears to be the universal rule, that reformation of a written instrument may be obtained where there is mistake on the part of the Plaintiff, and unequitable conduct, deceit, concealment and imposition of fraud on the part of the Defendant, inducing the Plaintiff’s mistake. *Gowdy v. Kelly*, 185 S.C. 415, 194 S.E. 156; *Jumper v. Queen Mab Lumber Co.*, 115 S.C. 452, 106 S.E. 473; *Forrester vs. Moon*, 100 S.C. 157, 84 S.E. 532; *Kennerty vs. Etiwan Phosphate, Co.*, 21 S.C. 226, 53 Am. Rep. 669.” *Aiken Petroleum*, 207 S.C. at 253.

In this appeal, Appellant does not attempt to distinguish the authorities, because they clearly affirm and support the basis for the remedial findings and conclusions of the Trial Court in this case.

ARGUMENT IV

THE TRIAL COURT DID NOT ERR IN AWARDING ATTORNEY FEES BECAUSE OF THE BAD FAITH OF APPELLANT IN THE CONDUCT OF THE LITIGATION

The Trial Court determined that because of the vexatious conduct of Ronnie Judy and Todd Judy, in particular, Ronnie and the other Defendants before the Trial Court should be liable to Respondents for the sum of \$7,000 as partial reimbursement of

Respondents' attorney fees incurred in the case. (R. pp. 23-27; Court Order). The total legal fees incurred by Respondents, as appears by reference to the Affidavit submitted by Respondents' Counsel, exceed \$38,000. (R. pp. 346-359). As the Trial Court's factual basis for the partial award, the Court cited the vexatious conduct of Ronnie and Todd Judy, in particular. The Court found that Ronnie had been admitted to hospital on the eve of trial of the Pond Dam case and then, only several days later on February 7, 2008, he conveyed his home on 9.29 acres and the nearby 10.9 acre tract to Todd for \$500.00. (R. pp. 429-434). After the filing of the case now before the Court on September 26, 2007, and not even a year later, Todd conveyed the same 9.29 and 10.9 acre lands to Ronnie's wife, Wanda. (R. pp. 435-440).

Ronnie correctly argues that Todd's conveyance was subject to the Lis Pendens filed by Respondents, but the argument misses the point. At the time of his conveyance to Wanda, Todd had been served with this lawsuit and had filed his *pro se* answer (obviously written by Ronnie), so that he could have only intended the transaction to complicate and confuse the present case. Todd did not attempt to explain the transaction to the Court. Wanda did not even appear at trial. Neither Todd nor Wanda have chosen to appeal to this Court. That the transfers were made in bad faith and with vexatious motive cannot be seriously argued. That the actions – at least Todd's conveyance to Wanda – occurred during the conduct of this litigation, cannot be disputed. The real question to be decided therefore, is where a party acts "in bad faith, vexatiously, wantonly or for oppressive reasons" in the conduct of the litigation, the parties guilty of such misconduct should be liable for attorney fees of the other parties which are incurred because of the misconduct.

Here, the attorney's billing statement reflects his time in preparing the Motion to Amend Complaint to add Wanda Judy as a party. (R. pp. 348-359; Plaintiffs' Exhibit "A" Attorney Fee Affidavit; Entry for March 10, 2009 and following). Respondents incurred legal expenses in preparing the Motion to Amend Complaint, appearing at the motion hearing in St. George, and for discovery activities following the Amended Complaint, including the taking of Todd's deposition. (R. p. 350; Attorney Fee Affidavit, Entry for October 21, 2009).

In the circumstances, the amount of fees ordered by the Trial Court, particularly in comparison with the total fees incurred by Respondents, is more than justified under the standards of *Baron Data Systems vs. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

The ultimate question, therefore, is whether Respondents were entitled to such an award of attorney fees. South Carolina Courts have consistently held that South Carolina follows the "American Rule" stated, for example in *Layman vs. State*, 376 S.C 434, 658 S.E.2d 320 (S.Ct. 2008), in which our Supreme Court held that "under the "American Rule" the parties to a lawsuit generally bear the responsibility of paying their own attorneys' fees, (citing *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 561, 106 S.Ct. 3088, 92 L.Ed.2d 439 (1986)). This Court and others recognize numerous exceptions to this rule, including the award of attorneys' fees pursuant to a statute... A statutory award of attorneys' fees is typically authorized under what is known as a fee-shifting statute, which permits a prevailing party to recover attorneys' fees from the losing party. See *Blum v. Stenson*, 465 U.S. 886, 893, 104 S.Ct. 1541, 79 L.Ed2nd 891 (1984).

The Supreme Court of the United States has also recognized the award of attorneys' fees in a "bad faith" context. In *Alyeska Pipeline Service Co. vs. Wilderness Society*, 95 S.Ct. 1612, 421 U.S. 240 (1975) the Court held that, in addition to an award of attorney fees pursuant to fee statutes, "Also, a Court may assess attorneys fees for the 'willful disobedience of a Court Order....as part of the fine to be levied on the Defendant...; or when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons...'. These exceptions are unquestionably assertions of the inherent power of the Courts to allow attorneys' fees in particular situations, unless forbidden by Congress...". 421 U.S. at 259.

In the case of *Roadway Express, Inc. vs. Piper*, 100 S.Ct. 2455, 447 U.S. 752 (1980) the United States Supreme Court dealt with Plaintiffs' attorneys who were dilatory and frivolous in pursuit of an employment discrimination case. In concluding that the District Court acted correctly in awarding attorney fees against Plaintiffs' counsel, the Supreme Court recognized that the inherent powers of Federal Courts are those which are "necessary to the exercise of all others". The most prominent of these is the contempt sanction; "which a Judge must have in exercising and protecting the due and orderly administration of justice and in maintaining the authority and dignity of the Court". However, the Court noted, because inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion, recognizing that in clearly defined circumstances Federal Courts have inherent power to assess attorneys' fees against counsel. *Roadway Express*, 447 U.S. at 764.

Citing *Link vs. Wabash Railroad Company*, 370 U.S. 626, 632, 82 S.Ct. 1386, 1389 (1962) the Court recognized the inherent power of a Trial Court to levy sanctions in

response to abusive litigation practices. In *Link* the Trial Court had dismissed an action for failure to prosecute. The Court acknowledged that the ultimate sanction available to a Trial Court is dismissal of an action with prejudice; a power of "ancient origin, having its roots in judgments of *non-suit* and *non-prosequitur*, entered at common law...and dismissals for want of prosecution of bills in equity." *Roadway*, 447 U.S. at 765.

The *Roadway* Court reasoned that since the assessment of counsel fees is a less severe sanction than outright dismissal, then surely the inherent authority of the Trial Court must also include the authority to require payment of legal fees. 447 U.S. at 765.

Recognizing the general rule of Federal Courts that a litigant cannot recover his attorney fees, the *Roadway Express* Court recognized that the rule does not apply when the opposing party has acted in bad faith. Citing *Alyeska*, *supra*, the Court acknowledged its inherent power to "assess attorneys fees for the willful disobedience of a court order...as part of the fine to be levied on the Defendant...or when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons."

The *Roadway* Court held that "bad faith" may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation. Recognizing that "this view coincides with the ruling in *Link*, *supra*, which approved judicial power to dismiss a case not because the substantive claim was without merit, but because the Plaintiff failed to pursue the litigation." 447 U.S. at 766.

Although no South Carolina decisions appear to have ruled upon an award of attorney fees in exactly the context as appears in this case, to the extent that the South Carolina Supreme Court has relied upon and has cited the articulation of Federal common law by the United States Supreme Court, such as in the *Layman* case, and to the extent

that the Federal Common Law, as articulated by the United States Supreme Court in the cases above cited, recognizes the "bad faith exception" based upon acts in the conduct of the litigation, it seems that our Courts have implicitly acknowledged the bad faith exception as a basis for the award of attorney fees.

Factually, the actions of Todd Judy, which are imputable to Ronnie Judy, in conveying land to Wanda Judy, Ronnie's wife, after this action was filed, could have only been for the purpose of obfuscating the legal process. At least that should be the presumption when no party, particularly neither Todd nor Wanda as grantees, have attempted to justify or explain the conveyance on any other than sinister purposes. The additional legal expenses incurred by Respondents because of the misconduct are at least the \$7,000.00 awarded by the Court, as may be found by reference to the Attorney's Affidavit and Time Statement. (R. pp. 346-359; Attorney Affidavit and Time Statement). If anything, the award of \$7,000.00 was low. It should be affirmed.

CONCLUSION

The most telling reason to affirm the Trial Court in this case is the failure of the grantees, Todd, Ryan, and Wanda Judy, to satisfy their burden to prove, by clear and convincing evidence, that the transfers at issue were supported by valuable consideration, and were *bona fide*. A long line of South Carolina decisions support the proposition. *Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc. supra*; *Gardner vs. Coven, supra*; and the many cases cited therein.

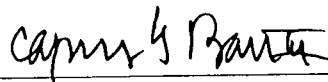
The silence of Todd, Ryan, and Wanda, at trial, and in this Appeal, speak volumes to the position that the conveyances at issue were a sham, and that that they were intended by Ronnie to evade and avoid his creditors.

The bad faith of Ronnie, Todd, Ryan, and Wanda in attempting another fraudulent conveyance while this case was pending, more than justifies the Order of the Trial Court awarding partial attorneys fees.

The Trial Court Order should be affirmed in all respects.

Respectfully submitted,

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July 10, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Martin R. Banks, Special Referee

Case No. 2007-CP-18-1794

James T. Judy, Bobby R. Judy
and Kevin Judy,

Respondents,

v.

Ronnie F. Judy, J. Todd Judy,
Ryan C. Judy and Wanda B.
Judy, Defendants,

of whom Ronnie F. Judy is,

Appellant.

REPLY BRIEF OF APPELLANT

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I. REPLY TO RESPONDENTS' ARGUMENT II; ACTUAL MORAL FRAUD.

Respondents correctly acknowledge that actual moral fraud is a necessary element of a Statute of Elizabeth claim under the present circumstances, at least as it pertains to the bulk of the challenged transfers. It is undisputed by the Respondents that they were not the Appellant's creditors at the time of the challenged 1998 conveyances. (R.p 193 line 17, 463; Plaintiffs Exhibit 21). For subsequent creditors a conveyance may be set aside when (1) the conveyance was "voluntary," that is, without consideration and (2) it was made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors. *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406 (Ct. App. 1995); citing *Gentry v. Lanneau*, 54 S.C. 514, 32 S.E. 523 (1899); *Parker Peanut Co. v. Felder*, 200 S.C. 203, 20 S.E.2d 716 (1942). The Subsequent creditors must show "actual moral fraud" rather than legal fraud. *Gentry v. Lanneau*, 54 S.C. 514, 32 S.E. 523 (1899). Respondents also correctly distinguish between actual moral fraud and constructive or legal fraud, the latter of which would be more correctly applied in construing whether the requisite fraud existed for setting aside the more recent conveyances.

Although the Respondents seemingly understand the standard to be applied to the 1998 conveyances, they misapply the standard. The Respondents devote a substantial amount of effort to describing the Appellant's "*animus*" in actions he allegedly took relative to the underlying tort claims and in his administration of an estate, but such "*animus*" is inconsequential in proving that the 1998 transfers were made with actual moral fraud, because ill will has nothing to do with fraud and all of the "*animus*", if any, occurred years after the challenged 1998 transfer. In fact, the record below and the Respondents' brief is nearly entirely devoid of any evidence tending to show that the 1998 conveyances were made with a view to the

debt(s) at issue herein. Instead, the Respondents advance the theory that, because they offered evidence at trial that the Appellant conveyed his interests in all of his lands in order to avoid threatened liabilities, then that alleged fraud extends and inures to be asserted by the Respondents nearly nine (9) years later. (R.pp. 184 line 18 through 185 line 7; Tr. 83: 18 to 84: 7). The Respondents seemingly ignore that alleged threatened liabilities had either lapsed or were satisfied. (R.pp 660-662, 372; Plaintiffs Exhibit 40, p. 32-34, Defendant's Exhibit 10). Moreover, to assert that the Appellant's continued use of the subject property after the conveyance and his representations to third party lenders that he continued to own the property somehow expanded and perpetuated the alleged initial fraud is without foundation. Respondents casually omit the fact that the only secured creditor they offered acknowledged that the Appellant was not the owner of the subject property. (R.pp. 137 line 18 through 138 line 16; Tr. 36: 18 to 37: 16). Respondents have offered nothing tending to show that, at the time of the 1998 conveyances, Appellant had a view to the alleged intentional torts that formed the foundation of their judgment(s) other than rank speculation that the Appellant believed he was "judgment proof". Simply put, the Respondents' proximity to the alleged fraudulent transfer is too remote and the court below erred in finding actual fraud sufficient to set aside the 1998 conveyances.

Furthermore, the Respondents seem to entirely ignore the consequences of such a ruling. In essence, it is the Respondents' contention that, if a conveyance was made with a view to avoidance of existing indebtedness, that fraud is never extinguished, even by satisfaction or lapse of the underlying debts, and can be raised in perpetuity by subsequent creditors having no privity with original creditors. The implications of such a holding are broad and stand to have

an enormous impact on heirs property. In essence, such a ruling relegates heirs property, passed down through generations, to as status of less than marketable title by leaving the door open, seemingly without end, to challenges by creditors.

II. REPLY TO RESPONDENTS' ARGUMENT III; REMEDY FASHIONED BY THE COURT.

Respondents correctly state that reformation of deeds is a well-recognized power of a Court of Equity. It is also undisputed that the Appellant has not challenged that power on appeal. However, the Respondents seek to distinguish the outcome in the within case as being a ruling having the consequence of reforming deeds instead of collaterally modifying the orders of two separate actions. Although the Respondents devote substantial effort towards defining the difference between a *nunc pro tunc* order and a reformation of a deed, the Respondents seemingly ignore that one of the 1998 deeds they sought to have set aside was not the deed that was reformed by the court below. As set forth more completely in the Appellant's initial brief, a large portion of the property "restored" to Ronnie Judy by the Court below was not the property he conveyed in the challenged 1998 conveyance, but was instead the property held by Todd Judy and Ryan Judy after partition actions had divided up the property he conveyed in the challenged 1998 conveyance. (R.pp. 307 line 20 through 309 line 9; Tr. 206 line 20 through 208 line 7). Although the Judge below did not state that he was ruling "now for then", the consequence of the remedy fashioned had the same effect. Clearly, the trial court recognized that its ruling had the effect of rendering moot the outcomes of the partition actions and, in an effort to rescue the "titles conveyed to the innocent parties in the partition actions", it fashioned a remedy modifying the partition deeds so as to reflect that the Appellant was the real party in interest in the

underlying partition actions. (R.p. 22; Order, p.16). The consequence of such reformation was to reform and modify orders and deeds of separate courts in distinct actions, over which the trial court had no jurisdiction and from which no appeal or other post-judgment motion had been taken, and to which the Appellant was not an interested party. The Respondents also seemingly ignore that, in addition to the trial court being without jurisdiction to so modify, another consequence of the remedy fashioned by the trial court would be to subject the Appellant to actions that he was determined to have no interest in and to which he did not participate in the outcome, thus depriving him of the most essential due process protections.

III. REPLY TO RESPONDENTS' ARGUMENT IV; ATTORNEYS FEES.

Although the Respondents devote a substantial effort to explaining and distinguishing bad faith and vexatious conduct in litigation as an exception to the general rule that attorney fees can only be recovered under contract or by statute, such attempts are factually and legally unsound in the present action. The Respondents make references to events that occurred prior to the commencement of the within action as evidence of the bad faith exception to the general rule that attorney fees can only be recovered under contract or by statute. Clearly, events that occurred prior to the commencement of the within action cannot form the foundation of vexatious conduct in litigation. So, the only allegation advanced by the Respondents in support of their bad faith exception that even remotely remains is the allegation concerning Todd Judy's conveyance of property during the pendency of this action to Wanda Judy. (R.pp. 435-440; Plaintiffs' Exhibit 16). However, even the Respondents acknowledge that the aforementioned conveyance was subject to the protections of the Respondents' Lis Pendens. (See S.C. Code

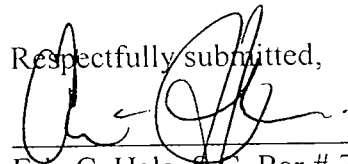
Ann. § 15-11-20 (1976) (any person obtaining an interest in land subject to a *lis pendens* is bound by all proceedings taken after the filing of the *lis pendens* to the same extent as if made a party to the action). That the Respondents felt compelled to seek leave to amend to achieve the same outcome as was afforded by function of the *lis pendens* scarcely rises to the level of vexatious conduct required to vary the general rule that attorney fees can only be recovered under contract or by statute. That the Respondents did not understand or appreciate the legal consequences of their *lis pendens* filing is not imputable to the Appellant and to assess attorney fees upon the Appellant under such circumstances would be manifestly inequitable given that the Respondents were adequately protected at law without needing to amend their pleadings. Moreover, although the Respondents allege that the actions of Todd Judy in conveying the property to Wanda Judy are imputable to the Appellant, there is absolutely no evidence in the record to support such a contention.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Special Referee and/or remand the case for hearings consistent with the reasons stated.

July 9th, 2012

Respectfully submitted,



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