

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Master-In-Equity

Cynthia Graham Howe, Master-in-Equity

Case No 2009-CP-26-3470

Robert W Oskin Glenn Small
and Freddie Kanos

Appellants

v

Stephen Mark Johnson Michael Brown
Joan Conner Brown and J Conner LLC

Respondents

And which State of South Carolina ex rel
Allan Wilson Attorney General is

Intervening Party

**FINAL BRIEF OF RESPONDENT
STEPHEN MARK JOHNSON**

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SC Court of Appeals

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CASES

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STATEMENT OF ISSUES ON APPEAL

- 1 WHETHER THE MASTER IN EQUITY PROPERLY ENTERED JUDGMENT IN FAVOR OF RESPONDENT JOHNSON WHEN THE EVIDENCE SHOWS THAT JOHNSON UNDERTOOK NO ACTION IN THIS MATTER?

STATEMENT OF THE CASE

Appellants filed this declaratory judgment action against all Respondents seeking a judgment for discharge of the SCB&T Note and Mortgage, for a finding that Michael Brown is the alter-ego of J Conner, LLC, and for a declaration that the assignment of the SCB&T mortgage to J Conner, LLC violated the South Carolina Fraudulent Conveyance Statute. Johnson answered the complaint denying liability and asserting that he undertook no action with regard to the subject transaction. The other Respondents also filed answers denying that Appellants were entitled to the relief sought.

The case was referred to the Master-In-Equity by order dated July 28, 2009 [R p 5]. Following discovery, the parties filed Motions for Summary Judgment, which were denied, and this matter proceeded to trial on February 15, 2010 [R pp 10, 14]. By Order filed March 26, 2010, the master decided in favor of the Respondents and denied Appellant's request for relief [R p 17]. The master thereafter denied Appellant's Motion for Reconsideration to Alter or Amend or for a New Trial [R p 30]. This appeal follows.

FACTS

The following discussion primarily relates to those facts which pertain to Respondent Johnson's actions, and, more notably, his inactions with regard to the subject case.

Johnson owns the subject property with Respondent Michael Brown as tenants in common. It is not disputed that Appellants are creditors of Johnson. Moreover, it is not disputed that creditor claims of Oskin and O'Connell serve as judgment liens on Johnson's half interest in the property.¹

Notably, however, that is where Johnson's role in this case ends. There is no evidence that Johnson conveyed any property or interest in property, nor any evidence that he personally participated in the forming of, or took any ownership or control interest in, J Conner, LLC, nor any evidence that he made any decisions or undertook any actions with regard to the manner of payment of money by one bank to another, nor any evidence that he engaged in any activity whatsoever for any purpose or intent to hinder his creditors' claims. Indeed, the only pertinent evidence of record simply reflects that Johnson, at all times relevant, was broke, and did nothing other than simply remain individually subject to the claims of the Appellants.

STANDARD OF REVIEW

Appellants seek review of their claims to set aside a transfer as fraudulent and under an alter-ego theory, both of which are equitable in nature. Albertson v Robinson, 371 S C 311 (Ct App 2006), Mid-South Management Co., Inc v Sherwood Develop Corp., 374 S C 588 (Ct App 2007). Therefore, as these are actions in equity, this Court may find facts in accordance with its own view of the preponderance of the evidence. Pickney v Warren, 344 S C 382 (2001).

¹ It is equally undisputed that the Appellants are not creditors of Michael Brown nor do their creditor claims serve as liens on Michael Brown's half interest in the property.

ARGUMENT

1 THE MASTER IN EQUITY PROPERLY FOUND IN FAVOR OF RESPONDENT JOHNSON AS TO ALL CAUSES OF ACTION

A Statute of Elizabeth

The Statute of Elizabeth generally voids any such transaction “made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures ” S C Code Ann § 27-12-10(A)

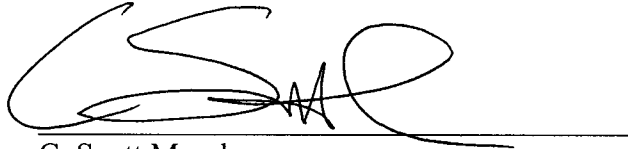
Respondent Johnson engaged in no transaction He was not even consulted about the status of the SCB&T note and mortgage [R p 269, lines 4-11] In fact, any possible participation by Johnson would have been “futile, fruitless”, as Johnson had no money and had no assets [R p 269, lines 10, 11] Moreover, he was not involved in the formation of J Conner, LLC [R p 328, lines 15-19] As such, Johnson had no conversations with anyone at Wachovia, was not a party to any transaction with Wachovia, and his personal finances had nothing to do with the loan from Wachovia to J Conner, LLC [R p 239, lines 14–25, p 240, lines 1-23] Therefore, the master’s order in this regard should be affirmed

B Alter-Ego

As described above, Responded Johnson did not participate in any manner with regard to the formation or activities of J Conner, LLC, nor is there any allegation that he did Again, at all times relevant, Johnson was broke, and there is no allegation that he performed any action that could be construed as a payment or satisfaction of the SCB&T loan Therefore, the master’s order in this regard should be affirmed

CONCLUSION

For the reasons set forth above, the Orders of the Master In Equity finding in favor of Respondent Johnson should be affirmed

A handwritten signature in black ink, appearing to read 'C. Scott Masel', is written over a horizontal line. The signature is stylized and cursive.

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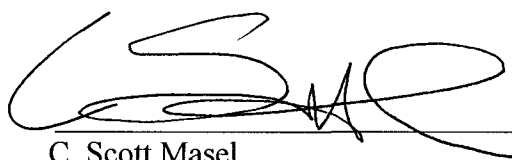
v

Stephen Mark Johnson, Michael Brown,
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Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR. The undersigned further certifies that this Final Brief complies with the Supreme Court's Order of August 13, 2007 regarding personal identifiers and sensitive information.



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CERTIFICATE OF SERVICE

I, the undersigned Legal Assistant of the law offices of Newby Sartip Masel & Casper, LLC, attorneys for Stephen Mark Johnson, do hereby certify that I have served all counsel in this action with a copy of the Final Brief of Respondent Johnson, hereinbelow specified by mailing a copy of the same by United States Mail postage prepaid, to the following addresses

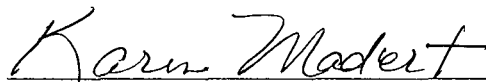
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June 29, 2011