

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Bentley Price, Circuit Court Judge

Case No. 2017-CP-10-5426
App. Case. No. 2023-1904

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Bridget D. Inman, Muriel C Kennedy, and Patricia Clarkin Smith.....Defendants,

And

Bruce A. Berlinsky, Intervenor,

Of Whom Muriel C. Kennedy is the Petitioner.

RESPONDENT'S RETURN
TO MURIEL C. KENNEDY'S
PETITION FOR WRIT OF CERTIORARI

Respondent, Family Services, Inc., as Conservator for Muriel W. Clarkin ("Respondent") submits this return to the petition for writ of certiorari ("Petition") of petitioner Muriel C. Kennedy ("Kennedy"). Respondent responds to Kennedy's arguments raised in her Petition as follows:

Kennedy raised the following 6 arguments in her Petition: 1) Inman's offer to deed the Elrod Drive property ("Property") was unconditional; 2) Respondent knowingly and intentionally waived any claim of equitable lien when it made a conscious and reasoned decision not to accept

the deed to the Property; 3) Respondent's cause of action for fraudulent conveyance fails because of the alleged knowing and intentional waiver of Respondent's claim against the Elrod Drive property by its refusal of the deed in and Inman's transfer of a portion of the proceeds of sale to Kennedy in September 2017 could not have been fraudulent because of Inman's alleged good unconditional offer to deed the Property in June of 2015, therefore Kennedy could not participate with Inman in a fraudulent act regarding the Proceeds of Sale. Moreover, Kennedy's asserts that she paid valuable consideration for receiving the Proceeds of Sale in the form of paying Inman's legal fees and costs; 4) Inman's offer to deed the Property in June of 2015, negates the second element of the cause of action for civil conspiracy, namely for the purpose of injuring the Plaintiff, because Inman's state of mind in offering the deed was to "help my grandmother", there was no combination for the purposes of injuring Mrs. Clarkin¹; 5) Inman's offer to deed the Property negates fraud, bad faith, abuse of confidence or any violation of fiduciary duty which Kennedy asserts is a necessary element of the equitable cause of action for constructive trust; and 6) the Amended Complaint negates at least one element of the cause of action for unjust enrichment because the Amended Complaint alleges that the benefit supposedly conferred upon Respondent Kennedy was from Respondent Inman not from the Respondent. Respondent will address each argument in turn below.

1) Kennedy asserts that this court erred in its ruling because Inman offered to unconditionally deed the Property to Respondent in 2015, and Respondent intentionally and knowingly declined to accept title to the Property waiving its rights. Therefore, the alleged unconditional offer of Inman negates any causes of action against Kennedy that allege Kennedy

¹ Kennedy also alleged Respondent's claim for attorney fees are not a claim for special damages. However, after Respondent filed the amended claim asserting a cause of action for civil conspiracy, this Supreme Court held that special damages are no longer a requisite element of a cause of action for civil conspiracy.

combined with Inman in a fraud, bad faith or inequitable conduct to toward her mother Muriel Clarkin. Respondent asserted the following causes of action against Kennedy: Fraudulent Conveyance, Civil Conspiracy, Unjust Enrichment, Constructive Trust, and Equitable Lien.

This line of argument sounds in the form of a defense and it is an error for a court to make a merits determination with regard to the application of a defendant's defenses to a cause of action on a motion to dismiss. *See. Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). The Appellate Court addressed this argument on page 5 of its opinion stating that it agreed with Respondent that it would be inappropriate for the lower court to have dismissed the causes of action asserted against Kennedy via a motion to dismiss based upon Kennedy's asserted defenses.

Moreover, the Appellate Court correctly noted in its opinion that the allegations of the Amended Complaint with regard to the "alleged offer, in and of itself, does not necessarily show [Inman's] intent to pay the full amount of her alleged obligation to Clarkin or negate the amended complaint's allegations or causes of action that may require a contrary intent. Further, a reasonable inference from the allegations of the amended complaint as a whole is that Granddaughter intended to avoid repaying the full amount she allegedly borrowed from Clarkin...This belies [Kennedy's] argument that Conservator's amended complaint referenced an offer that was unconditional. A reasonable inference from the combination of all of the above-referenced allegations is that Inman's offer was conditioned on a forgiveness of the remainder of the alleged debt...the amended complaint as a whole reveals the self-serving nature of Inman's offer of title to the Goose Creek property to Conservator. This is consistent with Conservator's equitable causes of action. Therefore, the circuit court erred in dismissing the amended complaint against Daughter 1 on the ground that it showed Granddaughter's good faith." (Op. 6-7). Kennedy asserts in 2015 Inman

made an unconditional offer, Respondent disputes that factual assertion of the unconditional offer and the Appellate Court agreed that a reasonable inference as to the allegations of the amended complaint taken as a whole raise serious questions as to whether the offer was conditional or unconditional. This issue of fact remains undetermined waiting a determination upon the merits and the Appellate Court correctly ruled that the lower court erred to the extent it dismissed Respondent's causes of action against Kennedy based upon this line of argument by Kennedy in her Motion to Dismiss.

2) Kennedy asserts the Appellate Court erred by failing to find Respondent waived any claim of an equitable lien when it made a conscious and reasoned decision not to accept the deed to the Property. Again, this line of argument sounds in the form of a defense, and it is an error for a court to make a merits determination with regard to the application of a defendant's defenses to a cause of action on a motion to dismiss. *See. Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). The Appellate Court correctly addressed Kennedy's argument in the Court's Opinion when it stated that the four corners of the amended complaint are silent as to allegations regarding the Respondent's refusal to accept the 2015 deed offer and "even if the refusal may be reasonably inferred from the amended complaint as a whole, second-guessing the judgment of a court-appointed fiduciary for an incapacitated person should not become the basis for dismissing a complaint pursuant to Rule 12(b)(6). Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." (Op. p. 8). The Appellate Court did not err in overturning the lower court's grant of Kennedy's motion to dismiss on this asserted ground of Kennedy.

3). Kennedy alleges Respondent's cause of action for fraudulent conveyance fails because of the alleged knowing and intentional waiver of Respondent's claim against the Elrod

Drive property by its refusal of the deed" and Inman's transfer of a portion of the proceeds of sale to Kennedy in September 2017 could not have been fraudulent because of Inman's alleged good faith unconditional offer to deed the Property in June of 2015. Therefore Kennedy could not participate with Inman in a fraudulent act regarding the Proceeds of Sale.

First, again this assertion sounds in the form of a defense. Second Inman's alleged unconditional offer in 2015 has no bearing on the actions Kennedy and Inman knowingly took in 2017 to hinder and delay Respondent's ability to collect amounts due by Inman to Respondent.

Additionally, Kennedy asserts Kennedy paid valuable consideration for the proceeds by paying Inman's legal fees for the action. Respondent plead that no valuable consideration was paid for the transfer and as such no intent to defraud is required. However even if at a trial on the merits the finder of fact were to determine consideration was paid by Kennedy to Inman for the transfer, Respondent plead and there is evidence in the record to show fraudulent intent on the part of Kennedy and Inman with regard to the transfer. Moreover, it is undisputed that the amount of the Proceeds of Sale which Kennedy received from Inman were in excess of the amount of money Kennedy used to purchase Apple, Inc. stock thereafter. Whether Kennedy used a portion of the Proceeds of Sale to pay Inman's legal fees, is a question of fact which remains in dispute. The Appellate Court did not err in overturning the lower court's order granting Kennedy's motion to dismiss on this asserted ground of Kennedy.

4.) Kennedy assert's Inman's offer to deed the Property in June of 2015, negates the second element of the cause of action for civil conspiracy, namely that Kennedy and Inman conspired for the purpose of injuring the Respondent, because Inman's state of mind in offering the deed was to "help my grandmother", there was no combination for the purposes of injuring Mrs. Clarkin. The Appellate Court correctly stated in its opinion the following:

The challenged conduct is (1) Granddaughter's and [Kennedy's] failure to repay the money allegedly loaned by Clarkin to Granddaughter for the purpose of purchasing the Goose Creek property, and (2) Granddaughter's and Daughter 1's use of the proceeds from the sale of that property for their own benefit rather than for the purpose of repaying Clarkin. There is undoubtedly a causal connection between this conduct and Clarkin's loss of the use of not only the sale proceeds but also the remaining funds allegedly owed by Granddaughter to Clarkin to apply toward Clarkin's own obligations. Further, a favorable decision on at least one of Conservator's causes of action would result in either a money judgment against at least one of the defendants or an equitable lien against the assets obtained with the sale proceeds. Either a money judgment or a combination of a money judgment and an equitable lien would allow Conservator to ultimately recover the funds necessary to apply toward Clarkin's own obligations and therefore redress her injury. (Op. pgs. 4-5).

Contrary to Kennedy's assertion that Inman offered to deed the Property to Respondent in 2015 for the purpose of helping Clarkin, the Appellate Court stated "in the light most favorable to Conservator, and with every doubt resolved in favor of Conservator, the amended complaint as a whole reveals the self-serving nature of Granddaughter's offer of title to the Goose Creek property to Conservator" (Op. pg. 7). Respondent adequately pled Kennedy and Inman's intent to injure Respondent in the allegations of the amended complaint including but not limited to paragraphs 120-122 of the amended complaint. The Appellate Court did not err in overturning the lower court's order granting Kennedy's motion to dismiss on this asserted ground of Kennedy.

5) Kennedy asserts Inman's offer to deed the Property negates fraud, bad faith, abuse of confidence or any violation of fiduciary duty which is a necessary element of the equitable cause of action for constructive trust. This line of argument again sounds in the form of a defense.

"A constructive trust arises against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained or holds the right to property which he ought not in equity and good conscience hold and enjoy." *Doe v. Doe*, 475 S.E.2d 783, 786-87 (Ct. App. 1996). Actual fraud is not necessary to prove the imposition of

a constructive trust. *McNair v. Rainsford*, 330 S.C. 332, 356-57, 499 S.E.2d 488 (Ct. App. 1998). The allegations of Respondent's amended complaint sufficiently plead allegations from which a court could reasonably infer from the plead allegations that Kennedy and Inman undertook acts or omissions which abused the confidence of Clarkin and/or Respondent, which were unconscionable, were taken for purposes of concealment and/or were done by questionable means against good conscience. The Appellate Court did not err in overturning the lower court's order granting Kennedy's motion to dismiss on this asserted ground of Kennedy.

6) Kennedy asserts the Amended Complaint negates at least one element of the cause of action for unjust enrichment because the Amended Complaint alleges that the benefit supposedly conferred upon Kennedy was from Inman not from the Respondent. Respondent disagrees with this factual assertion.

Respondent plead the Disputed Funds belong to Clarkin and in justice out to be repaid to Respondent. Respondent plead upon Kennedy's request Clarkin agreed to loan the Disputed funds to Kennedy's daughter to purchase the Property. Respondent plead Kennedy realized both the benefit of Clarkin making the loan to Kennedy's daughter and further received the benefit, through the Transfer, of possession of the majority of the Proceeds of Sale. Kennedy further received the benefit of having invested those Proceeds of Sale in her own stock accounts realizing the gains that have occurred from that stock over the last 6 years. Respondent clearly plead a non-gratuitous benefit was conferred upon Kennedy from which Kennedy realized a benefit in a circumstance which is was reasonable for Clarkin to expect repayment of the benefit Kennedy had requested, but Kennedy has retained the benefit which in justice and equity should be paid to Respondent as

conservator for Clarkin². The Appellate Court did not err in overturning the lower court's granting Kennedy's motion to dismiss on this asserted ground of Kennedy.

CONCLUSION

For the foregoing reasons, as wells as the arguments set forth in Respondent's briefs in the Appellate matter, which Respondent incorporates herein by reference thereto, Respondent respectfully requests that this Court deny the Kennedy's Petition for Writ of Certiorari.

January 22, 2024

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² Respondent also plead that Kennedy guaranteed to Clarkin that Kennedy would repay the fund's Clarkin loaned to Inman to purchase the Property (Am. Comp. ¶69)