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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2023-001715

MARY M. CROUCH, Trustee of the Samantha D. Delpozo Trust,

Respondent,

v.

ANGELA CROUCH DELPOZO, LINO HOMERO DELPOZO,
ANDREW OLIVER, SAMANTHA D. DELPOZO and all
other persons unknown claiming any right, title, estate, interest
in or lien upon the real estate described in the complaint herein,

of whom ANGELA CROUCH DELPOZO, LINO HOMERO DELPOZO,
ANDREW OLIVER, and SAMANTHA D. DELPOZO are the

Appellants.

INITIAL BRIEF OF APPELLANTS

February 21, 2024

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27 AM.JUR.2D *Equity* § 63 (1994).

STATEMENT OF ISSUES ON APPEAL

- I. IS SUMMARY JUDGMENT PROPER BEFORE DISCOVERY IS COMPETED?
- II. DO EQUITABLE COUNTERCLAIMS PRECLUDE THE APPELLANTS' EVICTION?
- III. DOES THE EQUITABLE INTEREST OF THE APPELLANTS ALLOW A PARTITION CLAIM?
- IV. DO THE APPELLANTS HAVE AN ALTERNATIVE CLAIM FOR BETTERMENTS?

STATEMENT OF THE CASE

In 1999, the Appellants LINO DELPOZO and ANGELA DELPOZO placed a mobile home on land owned by the Respondent MARY CROUCH and her late husband, who were the parents of ANGELA. This was replaced ca. 2001 by a double wide mobile home in the name of ANGELA. In 1999, the CROUCHes placed additional real property, making up 2.3 acres, into the trust, which named SAMANTHA DELPOZO as the beneficiary, the trust to be distributed when SAMANTHA turned twenty-five.

From 1999, LINO DELPOZO, ANGELA DELPOZO and SAMANTHA DELPOZO lived in the home and treated the same as their residence, maintained the surrounding yard and paid the real property taxes on the land it sat on.

Since 2012, SAMANTHA DELPOZO has been determined to be disabled and receives a government check. The Defendant ANDREW OLIVER, SAMANTHA's fiance, has lived at 1162 Reservation Road since 2021.

The Defendant ANGELA DELPOZO has installed a swimming pool, brick underpinning, a brick front porch, a separate shop and shed, a back porch, steps, a storage building, a cyclone fence, a well and septic tank and has remodeled the kitchen on the subject property.

Personal difficulties arose between ANGELA and MARY CROUCH, now the sole trustee. Mrs. CROUCH attempted to evict ANGELA and then all named Appellants. This suit was filed by her on June 20, 2022, stating an intent to evict all the Appellants, including SAMANTHA and her fiance, ANDREW OLIVER, now resident in the home.

At the time of the trust's creation, SAMANTHA DELPOZO was less than one year old. On March 11, 2021, Mrs. CROUCH extended the trust for an additional forty years, by which time SAMANTHA will be sixty-five and Mrs. CROUCH will be one-hundred and seventeen.

Personal difficulties arose between ANGELA and MARY CROUCH, now the sole trustee. Mrs. CROUCH attempted to evict ANGELA and then all named Appellants.

The Plaintiff's Motion for Summary Judgment was granted in part by the Order filed August 29, 2023. The Circuit Court held that no Appellant had a claim or interest in the subject real property. [RECORD ON APPEAL, Order, p. ____.] The Court dismissed the claims of the Appellants other than SAMANTHA DELPOZO for breach of fiduciary duty. [RECORD ON APPEAL, Order, p. ____.] The Court went on to dismiss the Appellants' Counterclaims for betterments and partition. [RECORD ON APPEAL, Order, p. ____.]

This suit for declaratory judgment and eviction was filed June 20, 2022.

The Court refused to grant judgment on the Respondent's causes for declaratory judgment, for recovery of possession of real property, and as to unjust enrichment. [RECORD ON APPEAL, Order, p. ____.]

The Appellants' Motion under Rule 59 was denied. This appeal followed.

STANDARD OF REVIEW

An appellate court reviews the grant of Summary Judgment under the same standard applied by the Trial Court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).¹ The Trial Court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), S.C.R.C.P.; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

A Court considering Summary Judgment makes neither factual determinations nor considers the merits of competing testimony. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5. (2006). In ruling on a motion for summary judgment, the Court must construe all ambiguities, conclusions, and inferences arising in and from the evidence most strongly against the moving party. *Glasscock, Inc. v. US Fidelity & Guar.*, 348 S.C. 76, 80, 557 S.E.2d 689, ____ (Ct.App. 2001).

However, Summary Judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, *supra*. To survive a motion for Summary Judgment, the non-moving party must offer some evidence that a

1. This paragraph is quoted, with stylistic changes only, from *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826, 829 (Ct.App. 2009).

genuine issue of material fact exists as to each element of the claim. *Steele v. Rogers*, 306 S.C. 546, 552, 413 S.E.2d 329, 333 (Ct.App. 1992).

ARGUMENT:

I. SUMMARY JUDGMENT IS NOT PROPER BEFORE DISCOVERY IS COMPETED.

The Defendant has conducted one deposition, and responded to the Plaintiff's discovery requests. No Scheduling Order has been issued in this case. The Defendants were pursuing discovery at the time of the Summary Judgment Motion hearing. A requested Deposition of ANGELA DELPOZO did not occur due to her medical conditions.

Our Supreme Court has held:

“In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *David v. McLeod Regl Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).

[*Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011)]

Our Court of Appeals has held:

The purpose of summary judgment is to expedite the disposition of a case that does not require the services of a factfinder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). “Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Id.* at 69, 580 S.E.2d at 439. “Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law.” *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000).

[*Gary v. Askew*, 417 S.C. 232, 239, 789 S.E.2d 94, 98 (Ct.App. 2016), *reh'g denied* (Aug 17, 2016)]

Discovery in this matter is not complete. Summary Judgment is not properly before this Court.

II. EQUITABLE COUNTERCLAIMS PRECLUDE THE APPELLANTS' EVICTION

The Respondent Mary M. Crouch accurately alleges that the title to the subject real estate is in a trust set up by her late husband Buck Crouch and herself on June 25, 1999. The Respondent is the Trustee of that trust, and the Respondent SAMANTHA D. DELPOZO is the beneficiary.

The Appellants have alleged in their verified Amended Answer and Counterclaims as follows, in relevant part:

11. In response to Paragraphs 20. thru 24. [of the Complaint], the Defendants allege as follows:

- a) That the mobile home in question is that purchased by ANGELA CROUCH DELPOZO in or about 2002, and placed on the subject real property, both with the approval of her parents Buck Crouch and MARY M. CROUCH; an earlier, single-wide was placed thereon on in 1999.
- b) That the said later mobile home was financed by Buck W. Crouch, which purchase price was repaid to him by ANGELA CROUCH DELPOZO;
- c) That ANGELA CROUCH DELPOZO is, and has been since its purchase, the title owner of that mobile home;
- d) That the Plaintiff is, and during his lifetime Buck W. Crouch was, aware that ANGELA CROUCH DELPOZO is, and has been since its purchase, the title owner of that mobile home;
- e) That the said mobile home and the subject real property it rests on is, and has been since the purchase of the mobile home, the address of SAMANTHA C). DELPOZO;
- 1) That the Plaintiff is, and during his lifetime Buck W. Crouch was, aware that the said mobile home and the subject real property it rests on is, and has been since the purchase of the mobile home, the address of SAMANTHA D. DELPOZO;
- g) That all the Defendants are permanent and continued residents of the said mobile home, and in the case of ANGELA CROUCH DELPOZO, LINO HOMERO DELPOZO and SAMANTHA D. DELPOZO, have been since its purchase and placement on the subject real property;
- h) That the Plaintiff is, and during his lifetime Buck W Crouch was, aware that all the Defendants are and were permanent and continued residents of the said mobile home, and in the case of ANGELA CROUCH DELPOZO, LINO HOMERO DELPOZO and SAMANTHA D. DELPOZO, have or had been since its purchase and placement on the subject real property;
- i) That with the exception of one year, ANGELA CROUCH DELPOZO has paid the taxes on the subject real property since 1999; . . .
- j) That the Plaintiff is, and during his lifetime Buck W Crouch was, aware that with the exception of one year, ANGELA CROUCH DELPOZO paid the taxes on the

subject real property since 1999; and that she is disabled and exempted from taxes on the subject mobile home; . . .

[RECORD ON APPEAL, Amended Answer and Counterclaims, p. ____.]

The Reply of the Respondent enters a general denial to the allegations above. [RECORD ON APPEAL, Reply, p. ____.]

In her Deposition, which the Respondent did not present to the Court at the hearing on Summary Judgment, the Respondent acknowledges the gist of those allegations above. [RECORD ON APPEAL, Deposition of Crouch, p.6, l.15 – p.12, l.5.]²

The Appellants have alleged the rights of ANGELA DELPOZO to the subject real property under theories of equitable estoppel, unjust enrichment, breach of fiduciary duty, partition and, in the alternative, for betterments.

The Circuit Court has held:

The Defendants have no claim or interest in the subject real property.

[RECORD ON APPEAL, Order, Conclusion of Law 12, p. ____.]

On an offer of proof, the Court can sustain an equitable right against a legal right and either suspend the enforcement of the legal title or decree that it shall be considered as held in trust for the benefit of the one having equitable title. In this case, ANGELA DELPOZO has an equitable right, as established by the verified Answer and Counterclaims. If those equities are made out, the Court will always require them to be satisfied before the legal title will be enforced. *Bowden v. Schatzell*, 8 S.C.Eq. (Bailey) (1831); *Miles v. Wise*, 32 S.C.Eq. (11 Rich.) 536 (1860); 27 AM.JUR.2D *Equity* § 63 (1994).

It has further been held that when a complainant stood by and allowed the other party to expend sums in improving the property, equity will not allow the party to be without relief. *Piedmont & Northern Ry. Co. v. Henderson*, 216 S.C. 98, 56 S.E.2d 740 (1949); *Welch v. Edisto Realty Co.*, 170 S.C. 31, 169 S.E. 667 (1933); *Southern R. Co. v. Day*, 140 S.C. 388, 138 S.E. 870 (1926); *Utley v. City of St. Petersburg, Fla.*, 292 U.S. 106, 54 S.Ct. 593, 78 L.Ed. 1155, *reh. denied* 292 U.S. 604, 54 S.Ct. 712, 78 L.Ed. 1466 (1934); *Hays v. Port of Seattle*, 251 U.S. 233, 40 S.Ct. 125, 64 L.Ed. 243 (1920); *Gildersleeve v. New Mexico Min.*, 161 U.S. 573, 16 S.Ct. 553, 40 L.Ed. 812 (1896). These are the

2. The Circuit Court was in possession of the verified Amended Answer and Counterclaims at the Summary Judgment hearing.

exact facts plead by the Appellants as part of their defense of equitable estoppel. [RECORD ON APPEAL, Answer, p. __.]

While Courts are less inclined to give effect to an estoppel affecting title to real property than in other instances, it is settled that title to land can pass by equitable estoppel when justice so requires. *Piedmont & Northern Ry. Co. supra*. By misleading conduct, a plaintiff may preclude herself from asserting a legal title to land or maintaining an interest therein. *Piedmont & Northern Ry. Co., supra*.

Equity and equitable defenses have been plead In this case. These include equitable estoppel, unjust enrichment, and partition. Except by its holding cited above, the Order of the Circuit Court does not address these defenses. [RECORD ON APPEAL, Order, p. __.] The establishment of these equitable defenses depend upon matters of fact for the jury to pass on, even though a final equitable decision will be that of the Court. They have, nevertheless, been adequately plead.

III. THE EQUITABLE INTEREST OF THE APPELLANTS ALLOWS A PARTITION CLAIM

In *Portman v. Garbade*, 337 S.C. 186, 522 S.E.2d 830 (Ct.App. 1999), the Court of Appeals dealt with, and on procedural grounds declined to rule on, a right to partition based on equitable grounds. Justice Howard dissented, writing that the matter should not have been dismissed with prejudice, since the failure was one of pleading a basis for such a claim. The existence of such a claim was not denied.

The Appellants' claims, as quoted above, are sufficient to establish an equitable right in the subject real property. In her Deposition, the Respondent testified as to the adult DELPOZOS' placement of homes on the land:

- 3 **Q** **When was the one put on the land, to your**
4 **recollection?**
- 5 **A** The first one was put on there the year that
6 Samantha was born, or the beginning of the next
7 year. Samantha was born in '98 and they moved down
8 in the Fall of that year, or the beginning of the
9 next year.
- 10 **Q** **How does that connect with the trust agreement?**

11 **take it that Samantha was alive when the trust**
12 **agreement was made?**

13 A It comes with the trust agreement, because when
14 they moved there they could move the mobile home,
15 they didn't need a certain amount of land to move
16 the single wide in. And then when they traded it
17 in for a double wide, they needed an acre. And we
18 had 2.3 acres, but we pulled out an acre to go into
19 the trust for Samantha.

[RECORD ON APPEAL, Deposition, p.7., 1.3-19]

Whatever legal ownership of the land was established, the Appellants' verified allegations above, and the Respondent's admissions in her Deposition quoted above, make it clear that the land was intended as a home for all the DELPOZOs. This evidence is sufficient to allow the Appellants to make their case for partition.

The Appellants' Counterclaim for partition should be allowed to proceed.

IV. THE APPELLANTS HAVE AN ALTERNATIVE CLAIM FOR BETTERMENTS

S.C. Code § 27-27-10 is the basic statute dealing with betterments. It provides, in relevant part:

After final judgment in favor of the plaintiff in an action to recover lands and tenements, if the defendant has . . . taken a lease thereof or those under whom he holds have purchased or acquired a title to such lands and tenements or taken a lease thereof, supposing at the time of such purchase or acquisition such title to be good in fee or such lease to convey and secure the title and interest therein expressed, such defendant shall be entitled to recover of the plaintiff in such action the full value of all improvements made upon such land by such defendant or those under whom he claims, in the manner provided in this chapter.

If, as the Respondent contends, the Appellants have no claim to the subject real property, it is nevertheless the law that they have the right to the full value of the improvements made by them on the property. The Appellants were, at the least, tenants at will and thus lessees.

The present double wide mobile home is owned by ANGELA DELPOZO alone. Its financing was paid for by the Appellants. The intent of the parties, both in 1999 and today, is that the present mobile home be retained on the property. [RECORD ON APPEAL, Deposition of Crouch, p.6, l.15 – p.12, l.5.]

The deposition given by Mrs. CROUCH makes it clear that she, her late husband as a trust settlor, and the older DELPOZOs intended the mobile home, and later double wide mobile home, respectively, which were placed on the subject real property, to be the DELPOZOs' residence. [RECORD ON APPEAL, Deposition, p. 7, l.10-19; Amended Answer and Counterclaims, Para.s 11, 25. - 27, 34, 62.] The trust and its execution were intended for this purpose. [RECORD ON APPEAL, Deposition, *id.*]

As summarized in *Hall v. Boatwright*, 58 S.C. 544, 36 S.E. 1001 (S.C. 1900):

By the common law the owner of the fee is the owner of all the structures and improvements on the land. Therefore one making improvements upon land of another would lose his improvements on recovery of the land from him by the true owner, and he would be without remedy. The betterments act was intended to relieve this condition and give a remedy. As stated by Mr. Justice Gary in *Tumbleston v. Rumph*, 43 S.C. 279, 21 S.E. 86, "The statutes in regard to betterments were . . . for the purpose of softening the asperities of the law, and affording relief where none otherwise existed." And Judge Cooley, in CONST. LIM. (5th Ed.) 480, says, "Betterments laws recognize the existence of an equitable right, and give a remedy for its enforcement where none existed before."

[*Id.*, 58 S.C. at 547, 36 S.E. at ____.]

Even granting legal title to exist in the trust alone, and without any enforceable claims thereto by the Appellants, the DELPOZOs position were lessees on the subject real property. As such, their placement of a double wide mobile home, its maintenance and the resulting improvements to the property, with the Respondent's stated intent to retain the same, are precisely those rights protected by the cited Betterments statute.

In her Deposition, Mrs. CROUCH firmly states that, any language in the Complaint to the contrary:

10 A Evicting Samantha from the property is not involved
11 in this.

[RECORD ON APPEAL, Deposition, p.13., l.10-11]

She states further:

25 The main issue here is
1 Samantha, This is Samantha's land. This is
2 Samantha's home, not Angela and Lino to live there free
3 its not. [sic]

[RECORD ON APPEAL, Deposition, p.14., l.25 – P.15, L.3.]

In response to a question, she states further:

23 **Q Ma'am, do you think Samantha has the ability**
24 **to have some input into what her best interests**
25 **are?**

1 A Once she turns 40 years old and gets it, or when
2 they leave the property and no one's there but her.

[RECORD ON APPEAL, Deposition, p.15., l.23 – P.16, l.3.]

Further, Mrs. Crouch states:

8 **Q Do you intend to evict Samantha from the property?**

9 A I do not.

[RECORD ON APPEAL, Deposition, p.24., l.8-9.]

The Respondent clearly intends retaining the double wide mobile home and its use by SAMANTHA DELPOZO. As such, the Respondent's claim to the property includes a claim to the double wide mobile home, an improvement made by LINO and ANGELA DELPOZO. Because Mrs. CROUCH is claiming ownership of the double wide mobile home, placed and paid for by the older DELPOZOS, she is (in the alternative to the defenses discussed above) subject to the Betterments statute and those Appellants have the right to all damages allowable under the Betterments statutes.

As in *Coggins v. Mckinney*, 112 S.C. 270, 99 S.E. 844 (1919), ANGELA DELPOZO, as a tenant of the trust, placed the double wide mobile home and thus erected the improvements with the knowledge and consent of Mrs. CROUCH and her late husband, and with no intention by her to make those owners a gift of the improvements. The Appellants have, by their verified pleading, alleged improve-

ments made in good faith, with the intention of enjoying them in the future, and with the knowledge and consent of the legal owner.

Under the holding in *Coggins* and related precedent, ANGELA DELPOZO is entitled, under the alternative claim under S.C. Code § 27-27-10, to so much money as the land has been increased in value in consequence of the improvements made and may also set up a claim against Mrs. CROUCH for so much money as the land has been increased in value in consequence of improvements or betterments.

CONCLUSION

This case is a family argument based not on the law but on a desire for personal control by the Respondent. Summary Judgment should not have been entered, given the state of discovery.

If the Court reaches the substance of the Order of the Circuit Court, equity allows those defenses set out in the Appellants' pleadings.

Even if those equitable defenses are disallowed, the adult DELPOZOs have the right to their damages under a theory of betterments.

The Appellants pray for relief accordingly.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that the final Brief of Appellant complies with Rule 211(b), S.C.A.C.R.

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