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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, Master In Equity and Special Circuit Court Judge
Trial Court Case No. 2022CP07-02454

Appellate Case No. 2023-000411

Blue Bell Holdings, LLC ..... Appellant,

v.

Gary C. Johnson, Stephen D. Halpern, Holly A. Angel, Holly Ann, LLC, Belmont Properties, LLC, Shoreline Funding, LLC and Orange Capital, LLC (Nevis)..... Respondents.

FINAL REPLY BRIEF

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Respondent's arguments are confused and misplaced. This appeal concerns Appellant's application to secure an injunction in the *second* lawsuit brought under the Statute of Elizabeth, after the filing of a separate, money damages suit.

Respondent begins by asserting Appellant "is really asking this Court to [] set a precedent that allows *any plaintiff* to freeze a defendant's assets *upon the filing of a lawsuit . . .* [seeking] *a money judgment*. . . . This is not the law of this State." Resp. Br. 2. Respondent misinterprets the facts, the law, and the relief request for three reasons.

First, Appellant did not seek to freeze Respondent's assets "upon the filing of a lawsuit" seeking a "money judgment." Appellant brought its money damages suit in October of 2021 and did not attempt to freeze Respondent's assets in anticipation of a potential money judgment in that suit. Appellant agrees that, in the normal course of a civil action pursuing a money judgment alone, a plaintiff cannot and should not be permitted to freeze a defendant's assets simply because the plaintiff might obtain a money judgment in the future. That is not what occurred here, and it is not what Appellant asked the lower court to do. Respondent's assertion to the contrary is disingenuous, at best.

Fourteen (14) months *after* the money damages suit was filed, Appellant discovered that Respondent—as the lower court initially described—"engaged in a series of fraudulent conveyances prohibited under South Carolina law" after the money damages suit was filed. (R. pp. 1-5) Appellant further discovered that, "after learning of [the money damages] lawsuit against him, [Respondent] began to transfer and[/]or encumber his assets, or the assets of LLCs in which he has an ownership interest." *Id.* In doing so, Respondent used an asset protection company that openly encourages it customers to use "equity stripping transactions" to "make the property less

attractive to creditors" and act "as a powerful deterrent to creditors" so that "when 'bad things' happen and you are in legal hot water," "offshore" entities "beyond the reach of local courts" can be used. App. Br. 3–4. As the lower court initially concluded in granting a TRO, Respondent "was engaged in a scheme of fraudulent transfers designed to make himself appear judgment proof." *Id.* It was only **after** this scheme was discovered that Appellant filed suit to set aside the fraudulent transactions that were part of the "scheme." Because Appellant believed it was likely to succeed on the merits of his fraudulent conveyance claims and because Plaintiff would be irreparably harmed with no adequate remedy at law if Respondent continued his scheme, Appellant sought—and was initially granted—temporary relief restraining Respondent from engaging in additional fraudulent transactions.

Respondent's attempt to couch this effort as a run-of-the-mill money damages suit, wherein a plaintiff seeks to freeze defendant's assets before obtaining the money judgment, is misguided and fundamentally flawed in fact.

Second, while South Carolina has yet to have the opportunity to address the specific type of conduct necessary to freeze assets in a pure money-judgment suit through the use of an injunction, numerous courts across the country have concluded that certain facts can give rise to the same. Fortunately, this Court is not required to resolve that issue in this appeal. Here, Appellant sought an injunction only related to the equitable Statute of Elizabeth claims, which seeks to set aside fraudulent conveyances. It is beyond question that courts can issue injunctions when equitable relief is sought and when temporary relief is needed to aid the court in entering a final judgment. *See U.S. ex rel. Rahman v. Oncology Assocs.*, 198 F.3d 489, 497 (4th Cir. 1999) ("A preliminary injunction is **always appropriate** to grant intermediate relief of the same character as that which may be granted finally." (emphasis added)); *see also* 37 C.J.S. Fraudulent

Conveyances § 163 ("On a proper showing, a threatened conveyance or transfer of property may generally be enjoined at the instance of creditors or other persons who would be defrauded by the conveyance. Fraudulent transfers are *especially amenable to interlocutory injunctive relief*, including permanent injunctive relief." (emphasis added)).

Third, while Respondent effectively concedes the lower court erred because it "focused on the legal relief sought in the First Lawsuit and *ignored the equitable claims sought in this action*, the Second Lawsuit," Respondent makes the same error. Respondent asserts Appellant "failed to establish that, in the absence of an injunction, it is likely, rather than merely possible,[1] that it will obtain a *judgment* against Respondent in the **First Lawsuit** and that Respondent will refuse, or be unable, to satisfy that judgment." Resp. Br. 9 (emphasis added). Respondent compounds the error by criticizing the likelihood Appellant will obtain a "multi-million-dollar judgment" asserting Appellant has offered "strikingly one-sided allegations" related to his money judgment claims and finally by concluding there is "apparent" "weakness" in Plaintiff's money damages "calculations." *Id.* These are precisely the arguments that lead to error in the lower court and likely why the lower court reversed course and ultimately came to the wrong conclusion about irreparable harm and an adequate remedy at law. But again, Appellant did not seek an injunction in the first lawsuit related to his claim for money damages, and it is hardly a surprise Respondent takes issue with how

[1] While Respondent incorrectly analyzes whether Appellant is "likely" to succeed on the money-damages claim in the first lawsuit, it is also incorrect to say that South Carolina courts have imposed a "likelihood" standard on the irreparable harm analysis. *See, e.g.*, *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) ("[T]he applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law."); *cf. id.* at 366 n.4, 709 S.E.2d at 642 n.4 ("Appellants also argue the court erred in not balancing the equities in this case. However, we recently announced that balancing the equities is no longer a requirement for a preliminary injunction."). Respondent relies on the federal standard with three cited federal cases. Resp. Br. 8.

Appellant calculated the amount of money Respondent stole through breaching his fiduciary duties to Appellant. Nevertheless, Appellant has never attempted to argue that, simply because it will succeed on the merits of its money damages claim, he is entitled to an injunction freezing Respondent's assets. Rather, Appellant sought an injunction in this case 14 months after it filed its money damages claim because Respondent engaged in a scheme of fraudulent transfers, and only sought an injunction related to his fraudulent transfer claims. Appellant has always argued that it is likely to succeed on the merits of those claims, and Respondent offers no credible argument to the contrary.

As a threshold issue, Respondent asserts that Appellant never made these arguments to the lower court and that they are not preserved for appellate review. Respondent is again mistaken. As Appellant explained to the trial court, "Plaintiff filed this Second Lawsuit . . . which sought to set aside the fraudulent conveyances pursuant to the Statute of Elizabeth, and further sought a temporary restraining order (TRO) and injunction *to restrain Johnson from making more fraudulent transfers* without Court approval." (R. p. 401) Appellant also explained why it was likely Appellant would succeed on the merits of its fraudulent transfer claims, cited the relevant South Carolina law related to fraudulent transfers, and argued this issue repeatedly to the trial court. (R. p. 246; R. p.p. 408-412; App. Br. 26–29) Nevertheless, the lower court never ruled, or otherwise indicated, that Appellant was not likely to succeed on the merits of those claims, and significantly, the lower court did not deny injunctive relief because Appellant was unlikely to succeed on the merits of any claim. *See* R. pp. 11-12) ("Specifically, I find that the Plaintiff did not show a lack of an adequate remedy at law or irreparable harm."). In the only order addressing the likelihood of whether Appellant will succeed on its fraudulent transfer claims, the lower court stated as follows: "Plaintiff has presented evidence sufficient to make a *prima facie* showing that

it will likely succeed on the merits of this case at trial on one or more of its claims." (R. pp. 1-5 at 2). Based upon this record, the lower court agreed Appellant was likely to succeed on the merits of its fraudulent transfer claims. However, because Respondent's arguments were incorrectly aimed at the money damages sought in the first suit, the lower court erred by presumably accepting Respondent's argument related to irreparable harm and adequate remedies related to the money damages suit. Irrespective of what the lower court thought, Appellant satisfied the elements necessary to have the TRO converted into an injunction, and the lower court erred by refusing the same.

In any event, Respondent's lengthy critique of Appellant's claim in the first suit for money damages is irrelevant and should be ignored by this Court. As an aside, it should come as no surprise that Respondent is critical of Appellant and Appellant's damages calculations. Nevertheless, it is important to understand the three (3) *limited* points of relevance between the two suits as it relates to Appellant's request for an injunction, which helps show how Respondent confused that relationship in material respects.

First, Appellant's initial suit simply establishes Respondent was "indebted" to Appellant at the time of the fraudulent transfers for purposes of the "likelihood of success on the merits" analysis related to Appellant's Statue of Elizabeth claims. It is "only necessary that the debt should have been in existence or the *right of action have accrued* at or before the time of the transfer" for purposes of the Statute of Elizabeth and the cause of action "may be reduced to judgment at a later date." *Matthews v. Montgomery*, 193 S.C. 118, 133, 7 S.E.2d 841, 848 (1940) (emphasis added). The law is clear that determining whether a person is "such an existing creditor as can invoke the protection of the statute the inception of the debt or obligation is the time which controls; and not the date of the subsequent entry of judgment." *Id.*; *see also PCS Nitrogen, Inc. v. Ross Dev. Corp.*,

127 F. Supp. 3d 568, 593 (D.S.C. 2015), *vacated in part*, No. 2:09-CV-03171-MBS, 2018 WL 11424153 (D.S.C. Mar. 8, 2018), and *dismissed sub nom. by PCS Nitrogen Inc. v. Ross Dev. Corp. Rivers*, No. 16-1540 (L), 2018 WL 2111081 (4th Cir. Mar. 19, 2018) ("South Carolina Rule of Civil Procedure 18(b) allow[s] actions for recovery of a debt and fraudulent conveyance to proceed contemporaneously, rather than previously where a creditor was required to obtain a return *nulla bona* before commencing an action to set aside a fraudulent conveyance."). Appellant was a creditor of Respondent for purposes of the Statue of Elizabeth.

Second, the initial lawsuit establishes the *amount* of Respondent's alleged debt. Specifically, the initial complaint alleges $5,166,672.11 in actual damages as well as an unspecified amount of punitive damages. Even accepting all of Respondent's arguments related to his "approximately "$3,000,000 net worth," there is no evidence that Respondent retained "sufficient property to pay the indebtedness to the plaintiff ***in full*** . . . ." 12 S.C. Jur. Equity § 23.5 (emphasis added).

Third, the initial lawsuit is relevant because courts have found that, when a party involved in active litigation engages in conduct to conceal or dissipate assets in order to evade a forthcoming judgment, this type of conduct is, in and of itself, grounds for an injunction in a pure money damages suit. *See, e.g., Liberty Mut. Ins. Co. v. Frank Coluccio Constr. Co., No.* C19 1652 MJP, 2019 WL 5802071, at *2 (W.D. Wash. Nov. 7, 2019) ("[W]here courts have granted injunctive relief based on a likelihood of dissipation of assets, there was evidence that the defendants were fraudulently concealing assets."); *see also Kalkan v. Salamanca*, 672 S.W.3d 725, 731 (Tex. App. 2023) ("In determining a debtor's actual intent, the trial court may consider, inter alia, whether 'before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit,' 'the transfer was of substantially all the debtor's assets,' and 'the debtor was insolvent

or became insolvent shortly after the transfer was made or the obligation was incurred.'" (quoting Tex. Bus. & Com. Code § 24.005(b)(4), (5), (9))). Thus, the first suit establishes the motivation behind the fraudulent transfers.[2]

Further, Respondent argues that, even though he gave mortgages on all his properties to a Nevis LLC he formed, the mortgages only secure "lines of credit" which he has never drawn or used. Resp. Br. 5. There is no documentary evidence in the record to support the assertion that the lines of credit have never been drawn. And even if this is true, it does not effectively refute the need for an injunction to guard against what Respondent may do in the future. The lines of credit arm Respondent with a tool to draw on the lines of credit at any moment. Even today, Respondent could write a check and max-out the lines of credit, and if the lower court's order stands, there would be no injunction in place to stop him. Equitable relief in the form of a temporary injunction stands as the only means to prevent this fraud from occurring.

Moreover, the lower court made an error of law in denying the equitable relief. The lower court appears to have been unable to separate Respondent's facially appealing argument—that Appellant cannot freeze Respondent's assets solely to preserve his ability to collect on a money judgment Appellant may never obtain—from the reality that Appellant seeks a temporary injunction because he is likely to succeed on the merits of his fraudulent conveyance claim. Appellant's request for an injunction was brought in the fraudulent conveyance case and related to his fraudulent conveyance claim. Because the law in South Carolina is clear that an "existing creditor" who has a "right of action" can invoke the protections of the Statute of Elizabeth and,

[2] Interestingly, it is hard to understand why Respondent would go through the trouble of setting up a Nevis based LLC and then give the LLC a mortgage on every single piece of property he owned, or otherwise had an interest in, if Appellant's claim in the first suit were so weak. With all due respect, Respondent's own actions show he was terribly worried about the first suit.

further, that the right of action "may be reduced to judgment at a later date," the initial lawsuit simply gives Appellant the status of an existing creditor who can invoke the protections of the Statute of Elizabeth. Because the transfers here were voluntarily and were not made in exchange for valuable consideration, Appellant is *not* required to show "actual intent to hinder or delay creditors. . . . Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows: (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 the transfer, but in the final analysis when the creditor seeks to collect his debt." 12 S.C. Jur. Equity § 23.5 (emphasis added) (citations omitted). For that reason, the lower court made an error of law in its ruling.

There is another, more practical reason the lower court should have granted the injunction in the Second Lawsuit. If the court does not grant a temporary injunction and Respondent engages in additional transfers, the court will later be unable to order appropriate and effective equitable relief in this case in the future. Upon learning of the initial lawsuit, Respondent systematically stripped the equity from 100% of the real estate he owned and transferred a remaining property interest to his live-in girlfriend and business partner. Appellant knows of no reason why Respondent will not make additional transfers to other parties, including parties not before the court, because Respondent engaged in fraud, even after Appellant sought relief in the lower court for Respondent's breach of fiduciary duties. *Significantly*, the injunction requested by Appellant only sought to prohibit transfers without court approval, so even the relief requested would have allowed Respondent to engage in transfers for value in good faith with court approval. [R. p. 459, p. 10, ln. 25 - p. 11, ln. l-3]. Of course, future transfers will neuter the lower court's ability to grant final relief in this case if the properties in question have been transferred to parties not before the

court or outside the court's jurisdiction.[3] This is precisely the reason why a "preliminary injunction is **always appropriate** to grant intermediate relief of the same character as that which may be granted finally," *U.S. ex rel. Rahman v. Oncology Assocs.*, 198 F.3d 489, 497 (4th Cir. 1999), and further why it is well settled that "fraudulent transfers are *especially amenable to interlocutory injunctive relief*, including permanent injunctive relief," 37 C.J.S. Fraudulent Conveyances § 163. Otherwise, a lower court is faced with a game of fraudulent transfer musical chairs, not knowing who needs to be before the court to craft complete relief until the music stops and Appellant later discovers where the property is and who is holding title.

* * *

Aside from the lower court's misunderstanding of the relief sought in the case, its injunction analysis turned on irreparable harm and an adequate remedy at law. (R. pp. 11-12) ("Specifically, I find that the Plaintiff did not show a lack of an adequate remedy at law or irreparable harm."). Respondent's arguments related to irreparable harm and an adequate remedy at law are equally misplaced.

Appellant asserts two types of irreparable harm: 1) additional fraudulent transfers will make Appellant's current fraudulent conveyance action meaningless because future transfers may occur, which make the court unable to offer appropriate relief (unwind the transfers) in this case if the assets at issue are transferred by Respondent; and 2) Respondent's intentional scheme to render himself insolvent by engaging in equity stripping transaction related to 100% of his real estate

[3] For example, if Respondent transfers the properties in question to his sister who lives in Ohio, the lower court will not be able to unwind the transaction without Appellant filing a new lawsuit naming the sister after establishing that the transfer from Respondent to the sister was fraudulent. And, if a temporary injunction is not entered in the case against the sister, the sister may transfer the properties to a friend, which will require yet another lawsuit. The hypothetical can go on indefinitely.

assets will create the inability to recover money damages. The lower court initially agreed both types of harm were irreparable. In its order granting a TRO, the lower court found Respondent "might engage in additional" fraudulent transfers and that, if he did so, "this would *clearly* cause irreparable injury, loss, or damage to Plaintiff." (R. p. 2 at 2) (emphasis added). The lower court also found that Respondent "may likely engage in similar conduct . . . which could cause irreparable harm to Plaintiff." *Id.* Regarding the second type of irreparable harm, the court found "Plaintiff has made a *prima facia* showing that after learning of a lawsuit against him, [Respondent] began to transfer and or encumber his assets, or the assets of LLCs in which he has an ownership interest, *to make it practically impossible for Plaintiff to use in the future to satisfy a judgment*." *Id.* at 1. Finally, the court found that Respondent's use of "foreign LLCs" to effectuate his fraudulent transfers was important because additional use of foreign LLCs could make actions seeking "to set aside the transfers cost prohibitive[, and t]his could likely cause permanent loss and damages to Plaintiff." *Id.* at 2. The lower court offered no explanation or analysis in its new ruling and reversal of course and only stated that Appellant had unidentified adequate remedies and would not suffer irreparable harm.

In opposition, Respondent argues that the harm envisioned by Appellant is unlikely to occur because Respondent is solvent and will be able to pay a judgment. Significantly, Respondent does not even attempt to address the harm that would be caused by additional fraudulent transfers to parties not before the court or outside of the lower court's jurisdiction. This point is effectively conceded by Respondent. In any event, Respondent's argument as to the second type of irreparable harm is misplaced for two reasons.

First, Respondent seeks to use the value of the properties *owned by the jointly-owned LLCs* to establish his solvency. However, the LLCs own this property, not Respondent. South Carolina

law is clear that property owned by an LLC cannot be used to satisfy a personal judgment of its members. *See First Citizens Bank & Trust Co., Inc. v. Blue Ox, LLC*, 422 S.C. 461, 470 n.5, 812 S.E.2d 418, 422–23 n.5 (Ct. App. 2018) ("[T]he assets of the LLCs are not subject to execution for Lindgren's[4] personal liability. Lindgren cannot shield assets through the use of entities and then contend he has sufficient assets to pay the judgment to advance his legal argument in this case.").

Second, to the extent the lower court relied on Respondent's net worth "estimate," this was also error. Even if Respondent's claimed net worth is currently "approximately $3,000,000," with no temporary injunction in place, Respondent can freely transfer his assets out of his individual name now at any time. In addition, the net worth number is unsupported by any evidence. Respondent did not submit a single shred of evidence to support his $3,000,000 estimate—no bank statements, no property appraisals, no business valuations, nothing. Additionally, Respondent's estimate is completely silent as to debt. As Appellant's forensic accountant testified, "Mr. Johnson did not provide *any* information in his affidavit to allow his [net worth] assertion to be verified. . . . Mr Johnson was significantly in debt to Island Funding, LLC and 30 Haul Away, LLC." (R. p. 583 ¶ 18) (setting forth testimony of George DuRant) (emphasis added). Finally, to the extent the court relied on Respondent's net worth estimate, Appellant asked the court to stay any decision to lift the injunction until such time as discovery could be conducted to verify Respondent's net worth representations. This could have been accomplished without causing delay. More importantly, Appellant may have been willing to withdraw his request for an injunction if Respondent's net worth exceeded the debt owed to Appellant in full. But the lower court summarily denied Appellant's good faith and relevant effort to obtain more information on

[4] Lindgren was the sole member of Blue Ox, LLC.

the net worth issue without explanation and, further, refused to delay its decision to decline temporary injunctive relief in the interim, which is also on appeal before this court as part of the June 7, 2023 Amended Order. *See* Notice of Appeal.

At the end of the day, a defendant should not be allowed to defeat an injunction related to a fraudulent conveyance analysis simply by asserting, with no support whatsoever, that he has millions of dollars, is solvent, and will simply write a check for the judgment if needed. At a minimum, Appellant should have been permitted to conduct basic discovery to determine how Respondent arrived at his net worth figure, to determine that the net worth figure was reliable and to confirm that Respondent retained assets to pay Appellant's debt "in full." The lower court refused this good faith request without explanation. Consequently, the lower court denied any injunctive relief and neither Appellant nor the lower court has seen evidence to establish whether Respondent has $3 or $30,000,000. And according to the lower court, Respondent remains free to engage in continued fraudulent transfers, against any TRO that remains in place pending appeal. As noted by the United States Court of Appeals for the First Circuit, the "Plaintiff likely will suffer irreparable harm because [the defendant] may dissipate or conceal [its] assets to avoid judgment." *Pineda v. Skinner Servs., Inc.*, 22 F.4th 47, 55 (1st Cir. 2021).

Turning to the lower court's second stated basis for denying the injunction, Respondent has not even attempted to show that Plaintiff has an *adequate* remedy at law. An adequate remedy must "attain the full end and justice of the case," and be "as practical, efficient, and prompt as the remedy in equity." *PCS Nitrogen, Inc. v. Ross Dev. Corp.*, 126 F. Supp. 3d 611, 645–46 (D.S.C. 2015), *dismissed sub nom. PCS Nitrogen Inc. v. Ross Dev. Corp. Rivers*, No. 12-1540(L), 2018 WL 2111081 (4th Cir. Mar. 19, 2018). Appellant has consistently argued that equitable relief is the only adequate remedy. (R. p. 463, p. 26, ln. 2-22)

While Respondent has listed three purported remedies, the record is devoid of any argument as to these remedies to the lower court. Even with Respondent's first mention of these remedies on appeal, Respondent does not attempt to explain how they would be adequate to the remedy of a temporary injunction. A quick analysis shows how, fundamentally, these remedies are not *adequate* as the law requires to defeat an application for an injunction. Execution, supplemental proceedings, or obtaining a charging order have no application to this suit and Appellant's Statute of Elizabeth claims. At best, the remedies might be available in Appellant's first suit for money damages. Again, Respondent confuses the relief sought in the first suit with the relief sought in the second suit. In any event, these remedies would not be an *adequate* remedy in either suit if Respondent has transferred his assets for foreign entities outside the control of the lower court.

Simply, execution, supplemental proceedings, and a charging order are not an adequate remedy available to Appellant in a fraudulent transfer action, and are not available in either case if Respondent has taken action to shield himself from a money judgment creditor. As shown, Respondent has already placed mortgages on his properties through a Nevis company he created and controls.[5] Appellant would only be able to use execution as a legal remedy *subject to* the prior interest holder. Respondent has failed to even address how waiting until a court renders a judgment in the money damages lawsuit would be helpful with the relief sought in the fraudulent conveyance suit or attain justice in this case, or be practical, efficient, or prompt. Moreover, if the properties are transferred to other third parties, Appellant would have to bring suit again them, in the future. Therefore, an equitable remedy is the only adequate remedy.[6]

[5] (R. p. 480, ¶ 59) ("I have not made any effort [to] hide my affiliation with Orange Capital.").

[6] The remedy of attachment, beginning at section 15-19-10 of the South Carolina Code, is also unavailable to Appellant because Respondent is a resident, has not absconded with property or

Respondent has also failed to address Respondent's use of an offshore Nevis LLC. As Respondent's asset protection company advertises, "when 'bad things' happen and you are in legal hot water," "offshore" entities "***beyond the reach of local courts***" can be used. App. Br. 4 (emphasis added). The Court need only look at the history of Respondent's actual efforts thus far to determine the likelihood that this might occur in the future. It is beyond dispute that once Respondent learned of the initial lawsuit, he formed a Nevis corporation and placed mortgages on 100% of the real estate he owned individually or otherwise had an interest in through LLCs.

In addition, these remedies would also be inadequate if Respondent has transferred his assets to parties who are not before the court, as a new suit would have to be brought against those parties in the future, who may be good faith purchasers for value. As previously established, the transfers currently challenged were voluntarily made for no consideration, which entitles Appellant to a less stringent burden of proof related to the fraudulent transfers. Because the current transferees were to insiders, Appellant <u>does not</u> have the burden to prove the that the transfers were not fraudulent. *See* 12 S.C. Jur. *Equity* § 23.5 ("[W]here transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.") (citing *First Union Nat'l Bank v. Smith*, 314 S.C. 459, 445 S.E.2d 457 (Ct. App. 1994)).

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concealed himself, and has not removed property from the state. *See* 2 S.C. Jur. Attachment § 4 ("The general grounds for attachment in those cases [for the recovery of money or real or personal property] are when the defendant is a non-resident or foreign corporation; . . . when the defendant has absconded with property or has concealed himself; or when the defendant has or is about to remove property from this state or has secreted or assigned any property with the intent to defraud creditors.").

Finally, Respondent cursorily asserts that Plaintiff has placed lis pendens on the properties, preventing further transfers. But it is well established that properties subject to a lis pendens can still be transferred subject to the lis pendens. *See* 51 Am. Jur. 2d *Lis Pendens* § 2 (2000) ("[A lis pendens] notifies potential purchasers that there is pending litigation that may affect their title to real property and that *the purchaser will take subject to the judgment*, without any substantive rights." (emphasis added)) (quoted in *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002)). Moreover, Respondent can simply draw on the lines of credit at any time, taking full advantage of his prior fraudulent transfer actions.

CONCLUSION

Respondent misunderstands and misstates why Plaintiff sought a temporary injunction in this case and, further, why a temporary injunction was needed in Plaintiff's fraudulent transfer causes of action. Respondent further misstates the exceptional circumstances of this case and his actions. Plaintiff comes to this Court seeking a temporary injunction safeguarding Respondent's assets from further unapproved transfers while Plaintiff litigates the fraudulent conveyances lawsuit. While Respondent discuses much about the merits of Plaintiff's initial money-damages lawsuit, Respondent does not even attempt to argue that Plaintiff will not succeed on its fraudulent transfer claims and does not explain why these the denial of an injunction would not cause irreparable harm or what other remedy Plaintiff could possible employ that is adequate to the remedy of a temporary injunction. Because the lower court has implicitly found that Plaintiff is likely to succeed on the merits of its fraudulent transfer claims and, further, because Plaintiff will be irreparably harmed with a temporary injunction with no remedy that comes close to providing the relief available through a temporary injunction, Plaintiff has shown that it is entitled to have the TRO, entered by the lower court, converted into a temporary injunction. Should this Court

believe a remand is appropriate so that the lower court can explain the basis of its complete reversal, a temporary injunction should remain in place in the interim.

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