

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

NASSCO, Inc.,
Plaintiff(s),

C/A NO.: 2023-CP-23-05263

vs.

ORDER

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Byunghwan Chay a/k/a Bjorn Chay and
Michelle Mihyang Chay,
Defendant(s).

Sep 09 2024

SC Court of Appeals

This matter comes before the Court as a non-jury trial. The Plaintiff was represented by Jonathan D. Waller. The Defendants were represented by Jason Ward with Defendant Michelle Mihyang Chay present and Defendant Byunghwan Chay a/k/a Bjorn Chay, not appearing. Having heard the testimony and having carefully considered the evidence, the Court finds in favor of the plaintiff and makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

This case arises from the transfer of property from Defendant Byunghwan Chay a/k/a Bjorn Chay to Defendant Michelle Mihyang Chay, then husband and wife. Defendant Byunghwan Chay, a debtor to the Plaintiff, owned a one-half interest in the property at the time of transfer. Plaintiff asserts a claim of violation of the Statute of Elizabeth (S.C. Code §27-23-10).

By clear and convincing evidence¹, the court finds the following facts to be true and supported by the testimony and evidence admitted at trial.

1. On or about September 15, 2021, Plaintiff filed a Complaint against Natural Solutions Company International, Inc. and Byunghwan Chay in U.S. District Court for the District of

¹ Windsor Props., Inc. v. Dolphin Head Constr. Co., 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998).

South Carolina. Shortly thereafter, a joint stipulation and request for entry of judgment was filed and payment schedule set for repayment.

2. On December 2, 2021, a Judgment was entered in favor of Plaintiff against Natural Solutions Company International, Inc. and Byunghwan Chay a/k/a Bjorn Chay in the amount of Four Hundred Thousand, Dollars, and Zero Cents (\$400,000.00) plus .21% interest along with costs (hereinafter “the Judgment”).
3. On May 19, 2022, the Judgment was transcribed into the Greenville County Court of Common Pleas as it appears at Judgment Roll No. 2022-CP-23-02643.
4. In the interim, and just prior to the Judgment being transcribed into Greenville County, Byunghwan Chay conveyed his one-half (1/2) ownership interest in the real property located at 100 Hammett Pond Ct., Greer, SC. 29650 (“Hammett Pond Property”), to his wife, Michelle Chay, by quitclaim deed dated May 16, 2022.
5. The deed was recorded in the office of the Greenville County Register of Deeds in Deed Book 2657 at Page 2668 and was conveyed “for and in consideration of the sum of One (\$1.00) Dollar and/or other good and valuable consideration.” The deed was re-recorded to add a missing “Exhibit A” on May 23, 2022 in Deed Book 2658 at Page 837².
6. Michelle Chay testified that sometime around Mother’s Day of 2022³ she discovered her husband’s infidelity and upon further inquiry, that he had withdrawn substantially all of the funds from their joint checking account representing the proceeds from the sale of her business in late 2020. From the evidence presented, Ms. Chay is a hard-working and honorable person.

² At the outset of the trial, counsel for Plaintiff stipulated that, despite a missing “Exhibit A”, the May 16, 2022 quitclaim deed contained a reference to a recorded plat and therefore sufficiently described the property to be transferred.

³ Mother’s Day 2022 was celebrated on May 8, 2022.

7. Michelle Chay further testified that upon this discovery, she demanded Byunghwan Chay convey his interest in the Hammett Pond Property to her and that she initiated divorce proceedings against him.
8. Michelle Chay testified that she purchased the Hammett Pond Property individually in 2008 and conveyed a one-half (1/2) interest in the property to her husband that same year.
9. Michelle Chay further testified that she was unaware that the proceeds of the sale of her business had been deposited into, and subsequently withdraw from, their joint personal bank account, and had in fact only discovered such a fact, the day prior to the trial of this case. She testified she did not regularly check this joint account.
10. Michelle Chay testified that her husband was indebted to her from the withdrawal of the funds from their bank account and that there was valuable consideration for the transaction; the forgiveness of debt, despite the language of the deed.
11. Michelle Chay further testified that, to the best of her knowledge, Byunghwan Chay, neither retained, nor was in possession of, sufficient assets with which to satisfy Plaintiff's judgment.

CONCLUSIONS OF LAW

Plaintiff brings this action claiming a violation of the Statute of Elizabeth, as codified in S.C. Code Ann. §27-23-10. The Statute of Elizabeth provides the following:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . 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 must be deemed and taken . . . to be clearly and utterly void . . . **S.C. Code Ann. § 27-23-10(A) (2007).**

Conveyances shall be set aside under two conditions: first, where the transfer is made by the grantor with the actual intent or defrauding his creditors where that intent is imputable to the grantee, even though there is a valuable consideration; and second, where a transfer is made

without actual intent to defraud the grantor's creditors, but without consideration. McDaniel v. Allen, 265 S.C. 237, 217 S.E.2d 773 (1975). The later situation is before this Court. However, the absence of consideration does not end the inquiry.

Where a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt.

Albertson v. Robinson, 371 S.C. 311, 317 (S.C. Ct. App. 2006), *quoting*, Mathis v. Burton, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct.App. 1995).

As to the first element, the Judgment, which followed a joint stipulation and request for entry of judgment, clearly indicates that Plaintiff was an existing creditor on May 16, 2022, the time of the conveyance. Byunghwan Chay prepared and signed the deed, including the language regarding consideration. As he failed to appear and present evidence to the contrary, the Court has to rely on the contents of the deed. Therefore, based on the voluntary transfer, the burden is on Michelle Chay as an intra-family member to show that the transfer should not be deemed fraudulent pursuant to S.C. Code Ann. §27-23-10.

It is well-established that "where 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." Windsor Properties, Inc. v. Dolphin Head Construction, 331 S.C. 466. 471 (S.C. 1998), quoting, Gardner v Kirven, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937).

Further, where the valuable consideration alleged is the forgiveness of a debt, the transferee is required to show, by clear and convincing evidence (1) that Byunghwan Chay had indeed

become indebted to her, the grantee, along with the amount; (2) that the conveyance in question, though voluntary on its face, was in fact made in payment of such indebtedness. Jackson v. Lewis, 34 S.C. 1, 12 S. E. 560 (S.C. 1891). “Certainly the mere fact that the grantor was indebted to the grantee would not, by itself, be sufficient to convert an apparently voluntary deed into a deed based upon a valuable consideration”. Id.

The court finds that regardless of intent, Michelle Chay has presented no credible evidence of indebtedness by Byunghwan Chay, nor was she able to demonstrate the amount alleged to be owed. She has further failed to present any evidence that such alleged debt was forgiven as consideration for the transfer. The language of the deed itself does not support her position. Inasmuch, she has failed to carry her burden to establish both a valuable consideration and the bona fides of the transaction.

Finally, the lack of evidence presented on behalf of Byunghwan Chay convinces this court that he has failed to retain sufficient assets in which to satisfy the debt owed to Plaintiff.

I therefore conclude as a matter of law that the deed transferring Byunghwan Chay’s one-half (1/2) interest in the Hammett Pond Property to Michelle Chay is void as fraudulent.

ORDER

IT IS HEREBY ORDERED, that the deeds, recorded in Deed Book 2657 at Page 2668, and re-recorded in Deed Book 2658 at Page 837, in the office of the Greenville County Register of Deeds are void.

IT IS FURTHER ORDERED, that the Greenville County Register of Deeds mark the deeds, recorded in Deed Book 2657 at Page 2668, and re-recorded in Deed Book 2658 at Page 837, in the office of the Greenville County Register of Deeds as “VOID”.

It is further ordered that Byunghwan Chay a/k/a Bjorn Chay, not transfer or attempt to transfer the property at issue here unless or until he has been ordered to do so by the court.

AND IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Greenville Common Pleas

Case Caption: Nassco Inc vs. Byunghwan Chay , defendant, et al
Case Number: 2023CP2305263
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)