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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Judge

Appellate Case 2024-001297
Case No. 2021-CP-32-00328

John Deere Construction & Forestry Company,
Plaintiff-Respondent,

v.

North Edisto Logging, Inc.; The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019;
The Estate of Paul D. Gunter; Matthew P. Rush; and Matthew Cody Gunter,
Defendants-Appellants.

INITIAL BRIEF OF RESPONDENT

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INITIAL BRIEF OF RESPONDENT

NOW COMES Plaintiff-Respondent John Deere Construction & Forestry Company (“Respondent”), by and through its undersigned attorneys, and pursuant to Rule 208(a)(2) of the South Carolina Appellate Court Rules, respectfully files its Initial Brief. Rule 208(a)(2), SCACR. For the reasons more fully set forth herein, Respondent seeks an Order affirming the Trial Court's Order of Judgment pursuant to Rules 208(b)(2) and 220(c). Rule 208(b)(2), SCACR; Rule 220(c), SCACR.

I. STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court properly conclude that Respondent's action was timely filed under the nonclaim statute codified at S.C. Code § 62-3-803(a)?
2. Did the Trial Court properly shift the burden of proof to North Edisto to establish the bona fides of the property transfers?
3. Did the Trial Court properly conclude that North Edisto failed to retain sufficient property for the benefit of its creditors?
4. Did the Trial Court properly conclude that the transfer of Property 13 to Matthew Cody Gunter was prejudicial to Respondent, despite a senior mortgage lien on Property 13?
5. Did the Trial Court properly dismiss the testimony of Paula Kneece as immaterial and Hearsay?

II. STATEMENT OF THE CASE

On February 2, 2021, Respondent filed a Verified Complaint ("Complaint") against North Edisto Logging, Inc. ("NEL"); The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 ("Trust"); The Estate of Paul D. Gunter ("Estate"); Matthew P. Rush ("Matt Rush"); and Matthew Cody Gunter ("Cody Gunter") (collectively, "Defendants") asserting three separate claims for

relief for fraudulent conveyance of property under S.C. Code Ann. § 27-203-10, *et seq.* and a fourth claim for relief for punitive damages (collectively, the "Claims"). (R. p. ____).

Defendants filed the following answers in response to the Complaint: (i) Matt Rush – March 24, 2021; (ii) Cody Gunter – July 7, 2022; (iii) the Trust and the Estate – July 7, 2022; and (iv) NEL – July 7, 2022 (collectively, the "Answers"). (R. p. ____).

Defendants filed the following motions pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure: (i) Cody Gunter – March 22, 2021 (the "Cody Rule 12 Motion"); (ii) the Trust – March 24, 2021 (the "Trust Rule 12 Motion"); (iii) the Estate – March 25, 2021 (the "Estate Rule 12 Motion"); (iv) NEL – March 26, 2021 (the "NEL Rule 12 Motion"); and (v) Matt Rush – April 14, 2021 (the "Rush Rule 12 Motion") (collectively, the "Motions to Dismiss"). (R. p. ____). On June 22, 2022, an Order was entered denying the Motions to Dismiss ("Order Denying Dismissal"). (R. p. ____).

Defendants filed the following motions pursuant to Rule 56 of the South Carolina Rules of Civil Procedure: (i) Cody Gunter – November 4, 2022 (the "Cody Rule 56 Motion"); (ii) Matt Rush – December 16, 2022 (the "Rush Rule 56 Motion"); and (iii) the Trust and the Estate – January 13, 2023 (the "Trust and Estate Rule 56 Motion") (collectively, the "First Summary Judgment Motions"). (R. p. ____). On March 2, 2023, an Order was entered denying the Cody Gunter's Rule 56 Motion, and on March 8, 2023, an Order was entered denying the Rush Rule 56 Motion and the Trust and Estate Rule 56 Motion (collectively, the "First Orders Denying Summary Judgment"). (R. p. ____).

Defendants filed the following motions for relief from the First Orders Denying Summary Judgment pursuant to Rule 60 of the South Carolina Rules of Civil Procedure: (i) Cody Gunter – March 9, 2023 and (ii) Matt Rush – March 13, 2023 (collectively, the "Rule 60 Motions"). (R. p.

___). Defendants filed the following motions for reconsideration of the First Orders Denying Summary Judgment pursuant to Rule 59 of the South Carolina Rules of Civil Procedure: (i) Cody Gunter – March 13, 2023 and (ii) the Trust and the Estate – March 20, 2023 (collectively, the "Rule 59 Motions").(R. p. ___).

The following orders were entered denying the Rule 60 Motions and Rule 59 Motions: (i) On June 16, 2023, the Honorable Walton J. McLeod entered an order denying the Rule 60 Motions; (ii) on July 27, 2023, the Honorable William P. Keesley entered an order denying the Rule 59 Motion filed by the Trust and the Estate; and (iii) on August 1, 2023, the Honorable J. Cordell Maddox Jr. entered an order denying the Rule 59 Motion filed by Cody Gunter (collectively, the "Orders Denying Reconsideration"). (R. p. ___).

On September 18, 2023, Cody Gunter filed another Motion to Dismiss and Motion for Summary Judgment, and on October 26, 2023, Matt Rush filed another Motion for Summary Judgment (collectively, the "Second Rule 56 Motions"). (R. p. ___). On November 29, 2023, the Honorable Diane S. Goodstein entered two orders denying the Second Rule 56 Motions (collectively, the "Second Orders Denying Summary Judgment "). (R. p. ___).

The parties exchanged the following extensive written discovery between July 8, 2022 and August 18, 2023: (i) Respondent's First Set of Interrogatories and Requests for Production of Documents Directed to Appellants, and Appellants' responses thereto; and (ii) NEL's First Set of Continuing Interrogatories and Requests for Production on Respondent and Respondent's responses thereto. (R. p. ___). On September 15, 2023, Respondent filed a Motion for Order to Show Cause and Motion to Exclude Evidence and for Sanctions ("Show Cause Motion") for Appellants' failure to provide complete and adequate responses to Respondent's discovery

requests. On November 29, 2023, an Order was entered granting the Show Cause Motion ("Show Cause Order"), excluding certain evidence from being used at trial by Appellants. (R. p. ____).

On January 31, 2024, the parties submitted Joint Stipulations of Facts. (R. p. ____). The trial was converted to a bench trial with consent of the parties, which was held on February 5, 2024. (R. p. ____). The Trial Court entered its Order of Judgment on March 7, 2024 ("Judgment") granting judgment in favor of Respondent as to the relief sought in the Complaint. (R. p. ____). On March 18, 2024, Appellants filed another motion for reconsideration of the Judgment pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, and on July 12, 2024, an order was entered denying that motion. (R. p. ____). On August 15, 2024, Appellants filed a Notice of Appeal of the Judgment ("Notice") and served Respondent with a copy of its Notice that same day. (R. p. ____).

III. STATEMENT OF FACTS

After Respondent filed a collection lawsuit against NEL and Paul D. Gunter, both NEL and Paul D. Gunter transferred fifteen (15) separate tracts of real property to family members or the Trust. (R. p. ____). Respondent filed this lawsuit against NEL, Paul D. Gunter, and the transferees to avoid the transfers as fraudulent, or constructively fraudulent, under S.C. Code Ann. § 27-23-10, *et seq.* ("Statute of Elizabeth"). (R. p. ____).

The Collection Lawsuit

In 2014 and 2015, NEL and Paul D. Gunter entered into five (5) separate loan contracts with Respondent to purchase logging equipment (collectively, the "Contracts"). (R. p. ____). NEL and Paul D. Gunter defaulted on the Contracts in 2016. (R. p. ____). On December 20, 2018, Respondent sued NEL and Paul D. Gunter to recover its collateral and collect \$1,218,374.38 plus

interest and attorneys' fees (the "Collection Lawsuit").¹ (R. p. ____). On December 8, 2020, the Honorable Walton J. McLeod, IV entered an Order Granting Plaintiff's Motion for Summary Judgment in the Collection Lawsuit.² (R. p. ____).

Paul D. Gunter died intestate on July 3, 2019. (R. p. ____).

The Real Estate Transfers

As stipulated by the parties, while Plaintiff's Collection Lawsuit was pending, the following Property was transferred by NEL and Paul D. Gunter (collectively, "Grantors")³ (R. p. ____):

Property No.	Tax Parcel No.	Owner of Property on Date Complaint filed	Description	Tax Value	Record
1	011418-01-041	NEL	252 Sugar Bottom Rd., Leesville, SC - Lot 41 (1.96 acres); Lot 42 (2.01 acres) West Fairview Farms, Ph II	\$69,730.00	R. p. ____
2	011417-01-004	NEL	319 Sugar Bottom Rd., Leesville, SC - Lot 4 (3.48 acres) Candy Bar Ranches subdivision	\$92,317.00	R. p. ____
3	012500-02-002	NEL	341 Convent Church Rd., Leesville, SC - Parcel C (10.00 acres)	\$46,090.00	R. p. ____
4	010400-03-009	NEL	Steedman Rd., Leesville, SC - Western portion of Tract 2 (60.00 acres)	\$135,100.00	R. p. ____
		NEL	Steedman Rd., Leesville, SC - Tracts A, B & C (54.02 acres)		
5	010400-03-048	NEL	Swamp Rabbit Rd., Leesville, SC - Parcel B (15.40 acres)	\$59,609.00	R. p. ____
6	010400-03-049	NEL	Swamp Rabbit Rd., Leesville, SC - 15.40 acres	\$48,688.00	R. p. ____
7	011300-01-030	NEL	1057 Pine Grove Rd., Leesville, SC - Lot A (28.45 acres); Lot B (1.26 acres)	\$48,000.00	R. p. ____
8	010400-03-024	NEL	916 N. Edisto Rd., Leesville, SC - Lots 62, 64, 66, and 68 (1.82 acres)	\$12,700.00	R. p. ____
9	010400-03-011	NEL	N. Edisto Rd., Leesville, SC - Parcel A (15.40 acres)	\$46,843.00	R. p. ____
10	010400-04-022 010400-04-037	Paul D. Gunter	N. Edisto Rd., Leesville, SC - Parcel B (1.20 acres)	\$8,400.00	R. p. ____
11	010400-04-010	Paul D. Gunter	916 N. Edisto Rd., Leesville, SC - Tract A (4.00 acres)	\$192,858.00	R. p. ____
12	010400-04-009	Paul D. Gunter	916 N. Edisto Rd., Leesville, SC - Tract B (4.00 acres)	\$64,059.00	R. p. ____
13	010400-05-021	Paul D. Gunter	N. Edisto Rd., Leesville, SC	\$63,300.00	R. p. ____

¹ John Deere Construction & Forestry Company v. North Edisto Logging, Inc. and Paul D. Gunter, Lexington County Court of Common Pleas Case No. 2018-CP-32-04329.

² Before a Form 4 could be entered or attorneys' fees sought or awarded, NEL and Paul D. Gunter appealed the Order Granting Summary Judgment. Oral argument on the appeal was heard December 15, 2023, and on July 3, 2024, the South Carolina Court of Appeals entered its opinion, affirming in part and remanding in part. The appeal bears South Carolina Court of Appeals Appellate Case No. 2021-000033.

³ Property 2 and Property 4 are each excepted from this lawsuit, and Plaintiff's claims concern only Property Nos. 1, 3, and 5-15.

Property No.	Tax Parcel No.	Owner of Property on Date Complaint filed	Description	Tax Value	Record
			- Tract B near US Hwy 178 (15.83 acres)		
14	010400-04-011	Paul D. Gunter	916 N. Edisto Rd., Leesville, SC - (12.97 acres)	\$39,450.00	R. p. ___
15	010400-04-015	Paul D. Gunter	1008 N. Edisto Rd., Leesville, SC	\$24,228.00	R. p. ___

While Respondent's Collection Lawsuit was pending, the Property at issue in the lawsuit that is the subject of the instant appeal was transferred by the following deeds in Lexington County, South Carolina (collectively, the "Transfers") (R. p. ___):

Deed Date	Date Deed recorded and Book / Page	Grantor(s)	Grantee(s)	Property transferred	Record
March 26, 2019	July 11, 2019 20824 / 5889	NEL Paul D. Gunter	The Trust	Property 1-12 Property 14-15	R. p. ___
March 26, 2019	July 11, 2019 20824 / 5896	Paul D. Gunter	Cody Gunter	Property 13	R. p. ___

The parties stipulated to the following facts, all of which are relevant to the present appeal, pursuant to the Joint Stipulation of Facts that the Court accepted at trial:

- At all times relevant to the Collection Lawsuit (i) the Grantors were indebted to Respondent for more than \$1,200,000, both before December 2018 and now, and (i) Paul D. Gunter had the following family members: (a) Brenda W. Gunter (spouse), (b) Paul Rockford "Rocky" Gunter (son), (c) Paula Gunter Kneece f/k/a Paula Lynn Gunter (daughter), (d) Debra Gunter Rush (daughter), and (e) Cody Gunter (grandson);
- Each of Paul D. Gunter's family members listed above knew about the Collection Lawsuit during the relevant time period;
- Before his death, Paul D. Gunter was the 100% owner and President of NEL and controlled all decisions and actions of NEL, after which he transferred all stock to his son Paul Rockford "Rocky" Gunter who became president and controlled all decisions and actions of NEL;
- On March 26, 2019, Paul D. Gunter and Brenda W. Gunter signed the Paul and Brenda Gunter Revocable Trust Agreement establishing the Trust;

- Paul D. Gunter and Brenda W. Gunter were the only Settlers/Trustees of the Trust, until the passing of Paul D. Gunter. No schedules or amendments to the Trust exist;
- On March 26, 2019, Paul D. Gunter as President of NEL and individually, voluntarily signed deeds to transfer Property Nos. 1-12 and Property Nos. 14-15 to the Trust;
- On March 26, 2019, Paul D. Gunter voluntarily signed a deed to transfer Property No. 13 to Cody Gunter;
- The deeds transferring Property Nos. 1-3 and 5-15 were all recorded on July 11, 2019; and
- No consideration was given to Grantors in exchange for any of the Transfers of the Property. (R. p. ____).

In 2019 the Grantors were unable to pay their respective debts when they became due and/or were insolvent or rendered insolvent on transfer of the Property. (R. p. ____). Control and use of the Property did not change after the Transfers. (R. p. ____). The Transfers of the Properties were departures from the usual method of business for the Grantors. (R. p. ____). The Transfers were not made for fair market value nor was reasonably equivalent value received in exchange for the Transfers of Property, and no consideration was given in exchange for the Transfers of Property. (R. p. ____). The Property can be used to satisfy some or all of the indebtedness owing to Plaintiff. (R. p. ____). The Transfers were not disclosed to, or were concealed from, Respondent and other creditors of the Grantors. (R. p. ____). The Transfers were made for the purpose of delaying, hindering, or defrauding Respondent and other creditors. (R. p. ____).

As a result, Respondent filed the underlying lawsuit to obtain an order which voids, sets aside, revokes, and annuls the Transfers of the Property, and for the Property to be sold to satisfy the indebtedness of NEL and the Estate to Respondent pursuant to S.C. Code Ann. § 27-23-10, *et seq.* (R. p. ____).

IV. STANDARD OF REVIEW

In South Carolina, “[a]n action to set aside a conveyance under the Statute of Elizabeth is an equitable action,” and the appellate court applies a de novo standard of review. *First Citizens Bank & Tr. Co., Inc. v. Park at Durbin Creek, LLC*, 419 S.C. 333, 339, 797 S.E.2d 409, 412 (Ct. App. 2017). “However, this broad scope [of review] does not relieve the appellant of his burden to show that the trial court erred in its findings[,] ... [and] we are not required to disregard the findings of the trial judge, who was in a better position to determine the credibility of the witnesses.” *Ballard v. Roberson*, 399 S.C. 588, 593, 733 S.E.2d 107, 109 (2012); *see also Pinckney v. Warren*, 344 S.C. 382, 387–88, 544 S.E.2d 620, 623 (2001)(finding that the appellate court is not required to disregard the fact that the trial judge is "in the better position to assess the credibility of the witnesses" and that "the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings").

V. ARGUMENT

The Trial Court found that Respondent was entitled to judgment as a matter of law under the Statute of Elizabeth because (i) the Transfers were made with the actual intent to defraud the Grantors' creditors, (ii) both Grantors were indebted to Respondent at the time, and (iii) such fraudulent intent was imputable to the Trust and Cody Gunter. (R. p. ____).

Based on the record before this Court, and for the reasons addressed more fully herein, Respondent respectfully requests that this Court affirm the Trial Court's grant of Judgment to Respondent on its Claims.

A. The Trial Court properly concluded that Respondent's action was timely filed under the nonclaim statute S.C. Code § 62-3-803(a).

Appellants' contention that South Carolina's Nonclaim Statute – which is codified at S.C. Code Ann. § 62-3-803(a) (the "Nonclaim Statute") – is a bar to Respondent's claims, is unfounded. Appellants' argument that the Nonclaim Statute is a complete bar to Respondent's action has been raised – and heard – by the Trial Court on at least seven separate motions, and denied each and every time, by four (4) different Trial Court judges. The argument raised by Appellants is nothing more than a carbon copy of their prior baseless claim that has been repeatedly rejected and is wholly without merit.

1. The Nonclaim Statute does not apply to demands or disputes regarding title to specific assets alleged to be included in an estate.

The plain language of S.C. Code Ann. § 62-1-201(4) makes it clear that its definition of "Claims" applies to the Nonclaim Statute and therefore that the Nonclaim Statute does not apply to demands or disputes regarding title to specific assets alleged to be included in the estate.

In interpreting statutory language, “the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 880 S.E.2d 476 (S.C. 2022) (quoting *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). In *Books-A-Million*, the South Carolina Supreme Court, quoting a prior opinion, noted that "the best evidence of legislative intent is the text of the statute". *Id.* (quoting *Creswick v. Univ. of S.C.*, 434 S.C. 77, 82, 862 S.E. 2d 706, 708 (2021)); *see also Wade v. State*, 348 S.C. 255, 259, 559 S.E. 843, 844 (2002). "A court must apply the plain meaning of a statute where its language is unambiguous and conveys a clear meaning."

Id.; see also *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). In such circumstances, "the rules of statutory interpretation are not needed, and the Court has no right to impose another meaning." *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022); *Pope v. Gordon*, 359 S.C. 572, 581, 598 S.E.2d 288, 293 (S.C. Ct. App. 2004). The plain language of the statute "must be construed in light of its intended purpose," with the Court giving the words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.*; see also *Pope*, 359 S.C. at 581, 598 S.E.2d at 293 (holding that "legislative intent must prevail if it reasonably can be discovered in the language used . . . [when] construed in the light of the intended purpose of the statute"). Importantly, the court should not focus on any particular part, section or provision, but "should consider the language of the statute as a whole." *Taylor*, 436 S.C. at 34, 870 S.E.2d at 171.

Here, there is no need to speculate as to how the legislature may have drafted the Nonclaim Statute differently or to resort to subtle or forced constructions of its plain written language. The legislature's intent to exempt from the Nonclaim Statute claims involving title disputes, such as disputes regarding the transfer of title to real property, is clearly defined in South Carolina's Probate Code ("Probate Code") codified at S.C. Code Ann. § 62-1-100 *et. seq.*

At the beginning of the Probate Code's general definitions, the legislature saw fit to state the following: "Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, ***and*** unless the context otherwise requires, in this Code." S.C. Code Ann. § 62-1-201 (emphasis added). This language makes clear that the general definitions apply throughout the Probate Code, of which the Nonclaim Statute is a part, and that those additional definitions apply subject to additional definitions contained in later articles unless the context in the Probate Code otherwise requires. What the language does not state or support

is that the general definitions do not apply in circumstances where additional definitions are lacking. That is, if there are no additional definitions in a given article or part, the "and unless the context otherwise requires" language does not apply. If the legislature had intended for the "unless the context otherwise requires" language to apply in the absence of additional definitions in a given article or part, the legislature could (and presumably would) have stated as follows: "Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, or unless the context otherwise requires, in this Code". It did not.

The Probate Code's general definitions defines the word "Claims" as follows:

(4) 'Claims', in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. **The term does not include** estate or inheritance taxes, or **demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.**

S.C. Code Ann. § 62-1-201(4) (emphasis added).

The Nonclaim Statute states in pertinent part:

All claims⁴ against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute or limitations or nonclaim statute; are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following:

(1) one year after the decedent's death

⁴ While the use of "claims" here is not capitalized, this has no bearing on whether it is the defined term of claims utilized in Section 62-2-201(4). This is clear from the reference in the Nonclaim Statute to a number of other terms defined in the general definitions that are likewise not capitalized like "protected person", "conservator", and "estate" by way of example. *See e.g.*, S.C. Code. Ann. 62-2-201(38), (6), and (11).

S.C. Code Ann. § 62-3-803(a) (emphasis added). The Nonclaim Statute does not contain any additional definitions. The defined terms it contains are all found in the general definitions. *See e.g.*, S.C. Code Ann. § 62-1-201(4) ("Claims"), (8) ("Devisee"), (11) ("Estate"), (20) ("Heirs"), (28) ("Mortgage"), (33) ("Personal representative"), (36) ("Proceeding"), (42) ("Security Interest"), and (45) ("State"). In the absence of additional definitions, the language of § 62-2-201 is clear: the general definition of "claims", including its carve out for title disputes, is the definition of "claims" that applies to the Nonclaim Statute. And when that definition is applied, the Probate Code unequivocally excludes from the Nonclaim Statute demands or disputes over title to specific assets alleged to be included in the estate such as title to real property, as is the case here.

Though the plain language of the Probate Code itself is clear regarding the exclusion, case law expressly discussing the exclusion of title disputes from the definition of "claims" under the Probate Code, and more specifically the Nonclaim Statute, is limited.

The South Carolina Supreme Court, *in dicta*, noted in a footnote in a matter involving a dispute related to a gun as well as money that "[b]ecause the estate asserts no interest in the gun, the issue of title to the gun is not subject matter related to the estate of the decedent," and "[t]he jurisdiction of the probate court extends to subject matter related to estates of decedents." *Matter of Howard*, 315 S.C. 356, 364, 434 S.E.2d 254, 259 (1993). The Court went on to note that

Had the estate asserted an interest in the gun, the result would be the same. The definition of 'claims' in the Probate Code expressly excludes disputes regarding title of a decedent to specific assets alleged to be included in the estate. S.C. Code Ann. § 62-1-201(4) (1986). Therefore, the dispute about title to the gun is not a 'claim' that could be presented to the probate court under Section 62-3-806.

Id., n. 8.

As such, the plain language of the Probate Code makes clear that the Nonclaim Statute does not apply to demands or disputes regarding title to specific assets alleged to be included in an estate.

2. Respondent's claims against Appellants constitute demands/disputes regarding title to specific assets alleged to be included in the estate and therefore are exempt from the application of S.C. Code Ann. § 62-3-803(a).

The allegations of Respondent's claims against Appellants make clear that those claims constitute demands/disputes regarding title to specific assets alleged to be included in the estate and are therefore exempt from the Nonclaim Statute regardless of whether those claims sound in contract, tort, or otherwise.

While Appellants are correct that Respondent's claim is for fraudulent conveyance, they incorrectly apply the definition of "claims" applicable to the Nonclaim Statute. Appellants argue that the Nonclaim Statute has a broad definition of claims that excepts fraud claims while ignoring wholesale the following part of the definition of "claims": "The term [claims] does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate." S.C. Code Ann. § 62-1-201(4). That part of the definition of claims follows a portion of the definition where the legislature specifically makes reference to the inclusion of liabilities "whether arising in contract, in tort, or otherwise". *Id.*

It is telling that not a single case to which Appellants cite to support their appeal involves demands or disputes regarding title to specific assets. Rather, each pertains to demands/disputes regarding the recovery of monetary relief. *See, e.g., In re Estate of Hover*, 407 S.C. 194, 754 S.E.2d 875 (2014) (applying the Nonclaim Statute to claim for a monetary deficiency judgment); *Phillips v. Quick*, 399 S.C. 226, 228, 731 S.E.2d 327, 328 (S.C. Ct. App. 2012) (applying the Nonclaim Statute to claim to recover funds allegedly converted); *Matter of Estate of Tollison*, 320

S.C. 132, 134, 463 S.E.2d 611, 612–13 (S.C. Ct. App. 1995) (considering claim made to probate court concerning recovery of settlement funds). Appellants do not reference a single case in which the Nonclaim Statute was applied to bar a claim involving a demand or dispute over title.

Because Respondent's claims in this case sought an order setting aside the transfer of title to fifteen (15) separate parcels of real property that are alleged to be included in the estate, they necessarily constitute demands/disputes regarding transfer of title that are exempt from the Nonclaim Statute, making the theory of liability in which those claims sound (tort, contract, or otherwise) immaterial to the analysis.⁵ Since title disputes are not subject to the Nonclaim Statute, Respondent's claims were properly granted.

B. The Trial Court properly shifted the burden of proof to NEL to establish the bona fides of the property Transfers.

1. Because the Transfers were inter-family exchanges, the burden rests with the Appellants to prove the bona-fides of the transactions.

Generally, the burden of proof rests with the Respondent to establish the three elements of fraud under the Statute of Elizabeth, by "clear and convincing" evidence. *First Citizens Bank & Tr. Co., Inc.*, 419 S.C. at 339, 797 S.E.2d at 412. However, if the Respondent can show "two or more" badges of fraud outlined in S.C. Code Ann. § 27-23-10(B), it will create a rebuttable presumption that the conveyance was fraudulent. S.C. Code Ann. § 27-23-10(B); *see also First Citizens Bank & Tr. Co., Inc.*, 419 S.C. at 339, 797 S.E.2d at 412 ("A badge of fraud creates a rebuttable presumption of intent to defraud.") (internal citation omitted).

Moreover, when a transfer is a voluntary inter-family exchange, "the burden shifts to the transferee to establish the transfer was valid." *Judy v. Judy*, 403 S.C. 203, 209, 742 S.E.2d 672,

⁵ Plaintiff did pursue monetary claims against decedent Paul Gunter in the 2018 Lawsuit, and those claims are not at issue in this lawsuit.

675 (S.C. Ct. App. 2013) (“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.”) (internal citations omitted); *see also In re Haddock*, 246 B.R. 810, 816 (Bankr. D.S.C. 2000) (holding inter-family transfers place the burden on the transferee to establish both (i) valuable consideration was exchanged as well as (ii) the "bonafides of the transaction" by "clear and convincing evidence, not mere preponderance of the evidence").

Here, the Trial Court properly concluded that the "[Appellants] failed to meet their burden." In its ruling, the Trial Court made it clear that the Transfers were "voluntary intra-family transfers" between the Appellants, as they were initiated from either (i) Paul D. Gunter to the Trust or (ii) from NEL to the Trust and/or Cody Gunter – all of which were either family members, or entities owned by family members.⁶ Because those Transfers were inter-family transfers, Appellants carry the burden of establishing both consideration and the bona fides of the transactions, by clear and convincing testimony. (R. p. ____).

2. The Trial Court weighed Appellants' evidence, and properly held that Appellants failed to retain sufficient property to pay their indebtedness to Respondent.

The general rule in South Carolina is that a fraudulent conveyance, made without consideration, will only be allowed to stand "if the grantor reserves a sufficient amount of property not merely at the time of the transfer, but an amount from which in the final analysis the creditors are able to collect their indebtedness in full." *Mallek v. Tangeman*, No. 2008-UP-317, 2008 WL

⁶ While the Trial Court uses the term "intra" family transfers in the Judgment, that term appears to be used interchangeably by several courts, with the term "inter" family transfers. See *Judy v. Judy*, 403 S.C. 203, 209, 742 S.E.2d 672, 675 (Ct. App. 2013)(using the term "inter-family transfer" when discussing the shifting burden under the Statute of Elizabeth); see also *McMasters v. Charpia*, No. 2007-UP-189, 2007 WL 8327419, at *3 (S.C. Ct. App. Apr. 24, 2007)(using the term "intra-family transfer" when discussing the shifting burden under the Statute of Elizabeth).

9842603, at *3 (S.C. Ct. App. June 25, 2008). However, when the Transfers were intra-family exchanges (as is the case here), the burden rests with the transferee to establish "both a valuable consideration and the bona fides of the transaction by clear and convincing testimony." *Id.*

As discussed, the trial court specifically found that the Transfers were made between family members, and as a result, the burden was properly placed on Appellants to prove the bona-fides of the transaction – which they failed to do. (R. p. ____). Appellants allege, without any basis in law or fact, that the Court erroneously shifted an inference of prejudice as a result of the finding of numerous badges of fraud. However, a review of the Judgment and the transcript clearly reveals that no such finding was ever mentioned or discussed by the Trial Court. In fact, the Trial Court specifically found that the "[Appellants] must establish sufficient property was retained such that constructive fraud under the Statute of Elizabeth would fail," and concluded that "[Appellants] failed to establish such an argument by clear and convincing testimony." (R. p. ____). More importantly, the Court held that Appellants "did not produce documentation of any kind nor did they present evidence of any kind, including witness testimony, concerning the assets or liabilities of Paul D. Gunter, or his estate," nor did the Trust present any evidence of any additional property or assets retained by Paul D. Gunter or his estate. (R. p. ____).

In short, Appellants failed to provide any evidence to support their case at trial, and the Trial Court properly weighed the evidence before it and found Appellant's case lacking. In light of the deference given to a trial court's findings of fact, which should not be disregarded on appeal, the Trial Court's holding should be affirmed. *Ballard*, 399 S.C. at 593, 733 S.E.2d at 109; *see also Pinckney*, 344 S.C. at 387–88, 544 S.E.2d at 623.

C. The Trial Court properly concluded that NEL failed to retain sufficient property for the benefit of its creditors.

For the reasons discussed *supra* at ___, the Trial Court properly found that the Grantors failed to retain sufficient property for the benefit of their creditors. In its ruling, the Court found that Respondent's witness, Zach Hartje, testified that all of the real property in the Grantors' names were transferred, and no assets were retained by either. (R. p. ___). Moreover, the Court reviewed the evidence submitted by Appellants, including NEL and Paul D. Gunter's tax returns and bank statements, and found that both Grantors failed to retain sufficient property to pay their indebtedness to Respondent. *Id.* In addition, the Trust likewise failed to present any evidence that there existed any additional property or assets retained by the Transferees, or the Estate. As a result, and for the reasons mentioned above, the Trial Court's holding should not be disturbed.

D. The Trial Court properly concluded that the transfer of Property 13 to Cody Gunter was prejudicial to Respondent.

The Court properly held that the transfer of Property 13, despite the existence of a senior mortgage, was prejudicial to Respondent. Appellants argue that the existence of a senior mortgage proves that Respondent was not prejudiced by the transfer of Property 13. Not only is there no case law to support such an inference, but Appellants solely rely on the 2019 tax value of Property 13, rather than an appraisal or other formal opinion of current value.

As this court knows, when a monetary judgment is entered, it acts as a lien on all real property in the County in which it was recorded. In many cases, such property is encumbered by a variety of liens, including mortgages, judgments, tax liens, and other consensual liens. While the mere existence of a senior lien may result in insufficient equity for the judgment lien to attach to *at the time*, the lien nonetheless exists as an encumbrance until it is fully satisfied. In addition, it is well known that judgments in South Carolina will remain on the record and act as a lien on real estate for up to ten (10) years. *See* S.C. Code Ann. § 15-35-810. Thus, it is logical to assume

that circumstances may (and often do) change for a judgment-debtor over a period of ten (10) years. And, a senior lien that exists today may easily be satisfied or removed at any time, or the property value may increase, resulting in equity that may otherwise be available for the judgment lien to attach to. Just because there is an alleged lack of equity today, does not mean that will remain the case for the entirety of the life of the judgment. Thus, regardless of the current equity status of the subject property, the transfer to a family member nonetheless prejudices Respondent because it would be permanently denied the benefit of its judgment lien for the full ten (10) years as provided for in the statute.

If the Appellants were allowed to transfer encumbered property, for the sole purpose of avoiding the effects of a valid judgment lien, then it would in fact incentivize judgment-debtors to conceal and remove assets to defraud their creditors at the first hint of trouble. This is exactly the kind of harm that the Statute of Elizabeth was enacted to prevent. S.C. Code Ann. § 27-23-10(A) (stating that every conveyance of land "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 void). As such, the Trial Court properly held that the transfer of Property 13 was fraudulent and considered null and void under the Statute of Elizabeth, regardless of the amount of equity available for a judgment lien to attach to.

E. The Trial Court properly found that the testimony of Paula Kneece was immaterial to its findings.

The Trial Court properly discounted the testimony of Paula Kneece (the daughter of Paul D. Gunter), as it was immaterial to its findings. (R. p. ____). While Appellants challenge the Trial Court's decision on the basis that no contemporaneous objection was made at trial, and that there existed an exception to the hearsay rule, the truth is that the Trial Court fully heard and considered

the entirety of her testimony (R. p. ____), and held that the testimony was immaterial to the application of law in this case (R. p. ____).

First, the Court made it abundantly clear that its decision was not being made on the basis of hearsay. Despite the reference to hearsay in the Judgment, the Trial Court nonetheless made it clear that its decision was based on the immateriality of Ms. Kneece's testimony, when it discussed that the only inference to be drawn from her testimony about Paul D. Gunter's condition and mental state, was the "motivations" in making the Transfers. (R. p. ____). In its ruling, the Court found that "[t]he law of South Carolina is clear" that that a debtor is not permitted to give their property away "regardless of the motive that sparks the donation." (R. p. ____); *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816–17 (1937) (Finding "[t]he motive which prompts the donor to make the gift is wholly immaterial").

In addition, Appellant claims that Respondent failed to make a contemporaneous objection at trial, which again, is immaterial to the current appeal. While Respondent agrees that in order to preserve an issue for appellate review, a "contemporaneous objection must be made when the evidence is offered." *State v. Patterson*, 367 S.C. 219, 226, 625 S.E.2d 239, 242 (Ct. App. 2006). However, *Respondent* has not appealed the Judgment and is not challenging the Trial Court's ruling. Thus, the lack of an objection is inconsequential to this appeal. In addition, Respondent did not make a hearsay objection for two additional reasons: (1) this was a bench trial, where the Trial Judge was the finder of fact, and (2) the testimony being offered about Paul D. Gunter's health was immaterial to the present case under the law.

Likewise, it is well settled in South Carolina that the admission or exclusion of evidence falls within the "sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion." *State v. Williams*, 380 S.C. 336, 343–44, 669 S.E.2d 640, 644 (Ct. App.

2008) (holding that "the court's decision will not be reversed on appeal absent a showing of prejudice" which must "affect a substantial right"). Here, the trial Court made it abundantly clear that its ruling was predicated upon the testimony being immaterial to the present facts and application of the law, and not based on whether the testimony constituted hearsay or whether an objection that it constituted such was made. Thus, the Trial Court did not err in its ruling, and therefore, the Judgment should not be overturned.

F. An Additional Response to Appellants' Arguments.

Should this Court find Respondent's foregoing arguments are not conclusive as to these issues, Respondent respectfully requests this Court to affirm the Trial Court's ruling on any ground appearing on the record as provided by Rule 220(c), SCACR.

VI. CONCLUSION

For these reasons, Respondent respectfully requests that the Court affirm the Trial Court's Judgment in its entirety.

Respectfully submitted, this the 31st day of December 2024.

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December 31, 2024

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Dec 31 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Judge

Appellate Case 2024-001297
Case No. 2021-CP-32-00328

John Deere Construction & Forestry Company,
Plaintiff-Respondent,

v.

North Edisto Logging, Inc.; The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019;
The Estate of Paul D. Gunter; Matthew P. Rush; and Matthew Cody Gunter,
Defendants-Appellants.

PROOF OF SERVICE

I hereby certify that on December 31, 2024, the foregoing INITIAL BRIEF OF RESPONDENT was served on the following person via email and by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following person at the following address which is the last addresses known to me:

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Raleigh, North Carolina
December 31, 2024