

RECEIVED

Mar 03 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. Walton J McLeod, Circuit Judge

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

John Deere Construction & Forestry Company, 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

Of which, North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26,
2019; The Estate of Paul D. Gunter; and Matthew Cody Gunter are the Appellants.

APPELLANTS' FINAL REPLY BRIEF

March 3 , 2025

D. Randolph Whitt
S.C. Bar No. 13068
344 Blossom View Ct.
West Columbia, SC 29170
(803) 422-2176 Tel
dwhitt2001@aol.com
Attorney for Appellants

TABLE OF CONTENTS

Arguments

1. THE TRIAL COURT ERRED IN CONCLUDING THAT RESPONDENT'S ACTION WAS
TIMELY FILED UNDER THE NONCLAIM STATUTE S.C. CODE § 62-3-803(a).....1

2. THE TRIAL COURT ERRED IN FINDING PREJUDICE TO RESPONDENT BY
IMPROPERLY SHIFTING THE BURDEN OF PROOF TO NORTH EDISTO.....2

3. THE TRIAL COURT ERRED IN FINDING NORTH EDISTO FAILED TO RETAIN
SUFFICIENT PROPERTY BY IMPROPERLY SHIFTING THE BURDEN OF PROOF TO
NORTH EDISTO.....2

4. THE TRIAL COURT ERRED IN CONCLUDING THAT THE TRANSFER OF PROPERTY
13 TO MATTHEW CODY GUNTER WAS PREJUDICIAL TO RESPONDENT'S WHEN THE
PROPERTY WAS SUBJECT TO A PRIOR ARM'S LENGTH MORTGAGE THE EXCEEDED
THE VALUE OF THE
PROPERTY.....2

5. .THE TRIAL COURT ERRED IN FINDING THAT THE TESTIMONY OF PAULA KNEECE
WAS HEARSAY.....3

Certificate of Counsel.....4

TABLE OF AUTHORITIES

CASES

Wilson v. Wilson 312 S.C. 172, 439 S.E.2d 323(S.C. Ct. App. 1993).....3

STATUTES

S.C. Code Ann. § 62-1-201(4).....1

S.C. Code §62-3-803(a).....1-2

OTHER AUTHORITIES

SCRE Rule 301.....2

ARGUMENT 1

THE TRIAL COURT ERRED IN CONCLUDING THAT RESPONDENT'S ACTION WAS TIMELY FILED UNDER THE NONCLAIM STATUTE S.C. CODE § 62-3-803(a).

Respondent has now abandoned its “fraud exception” argument and relies solely on arguing for a narrow construction of the term “claims” in the nonclaim statute.

The best refutation of this argument is contained in Judge McLeod's first order in this matter, filed June 22, 2022 (R. pp. 16-17), which states:

“The Probate Code defines "claims" as including "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." S.C. Code Ann. § 62-1-201(4). The Probate Codes specifically excludes "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" from its definition of "claims." Id. However, the preamble of the general definitions in Section 201 contains the following language of limitation: “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.

Therefore, the general definitions in Section 201 must be read in light of the context and more specific provisions of other sections, such as S.C. Code §62-3-803. The references in Section 803 to “all claims” and the inclusion of pairs of attributes such as “due or become due,” “absolute or contingent,” “liquidated or unliquidated,” and the trio “founded on contract, tort, or other legal basis” are inconsistent with the narrow Section 201 definition of claims. In each instance, the groupings are designed to cover the entirety of the spectrum of these attributes.

There is also an integral distinction between the entities covered by the two definitions in Section 201 and 803. Section 201 applies only to claims against “estate of decedents and protected persons.” Section 803 applies to claims against “the estate, the personal representative, the decedent’s heirs and devisees, and nonprobate transferees of the decedent.”

The Court finds a central tenant of the rules of statutory construction is that every word of the legislative enactment should be given credence. Adopting the restrictive Section 201 definition of claims would read many of the words of Section 804 out of existence and render them meaningless. The context and specifics of Section 804 also compel the conclusion that an expansive definition of claims is intended for the nonclaim statute.”

Appellant's respectfully submit that Judge McLeod's reasoning as stated above should be adopted, and dismissal of the claims against the Appellant's protected by the nonclaim statute should be directed by this court.

ARGUMENT 2

THE TRIAL COURT ERRED IN FINDING PREJUDICE TO RESPONDENT BY IMPROPERLY SHIFTING THE BURDEN OF PROOF TO NORTH EDISTO.

Respondent's argument on this issue does not address the impact of SCRE 301, that any presumption based on the “badges of fraud” was not sufficient to also establish prejudice, especially when the record contains ample evidence that North Edisto had substantial assets and income after the transfers complained of.

ARGUMENT 3

THE TRIAL COURT ERRED IN FINDING NORTH EDISTO FAILED TO RETAIN SUFFICIENT PROPERTY BY IMPROPERLY SHIFTING THE BURDEN OF PROOF TO NORTH EDISTO.

Respondent's argument on this issue does not address the impact of SCRE 301, that any presumption based on the “badges of fraud” was not sufficient to also establish that North Edisto failed to retain sufficient assets, especially when the record contains ample evidence that North Edisto had substantial assets and income after the transfers complained of.

ARGUMENT 4

THE TRIAL COURT ERRED IN CONCLUDING THAT THE TRANSFER OF PROPERTY 13 TO MATTHEW CODY GUNTER WAS PREJUDICIAL TO RESPONDENT'S WHEN THE PROPERTY WAS SUBJECT TO A PRIOR ARM'S LENGTH MORTGAGE THE EXCEEDED THE VALUE OF THE PROPERTY

Respondent concedes that there is no equity in Property 13 at this time. However, they conjure a number of possible future events that might result in equity in the future. However, for this future equity to be relevant to any prejudicial effect, the current assets of North Edisto would have to be insufficient to satisfy some future judgment that might be obtained by Respondent. As noted above, Respondent has failed to demonstrate that the assets and income established in the record is insufficient to pay Respondent, in the event they are found to be owed anything.

ARGUMENT 5

THE TRIAL COURT ERRED IN FINDING THAT THE TESTIMONY OF PAULA KNEECE WAS HEARSAY

Respondent's argument that no contemporaneous objection was required flies in the face of the principle that a party which fails to object to evidence when it is introduced has waived any objection and acquiesced to its admission. *Wilson v. Wilson* 312 S.C. 172, 439 S.E.2d 323(S.C. Ct. App. 1993)

Respectfully submitted,

/s/ D.Randolph Whitt

D. Randolph Whitt
S.C. Bar No. 13068
344 Blossom View Ct.
West Columbia, SC 29170
(803) 422-2176 Tel
dwhitt2001@aol.com
Attorney for Appellants

March 3, 2025

RECEIVED

Mar 03 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. Walton J McLeod, Circuit Judge

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

John Deere Construction & Forestry Company, 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

Of which, North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26,
2019; The Estate of Paul D. Gunter; and Matthew Cody Gunter are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

/s/ D.Randolph Whitt

D. Randolph Whitt
S.C. Bar No. 13068
344 Blossom View Ct.
West Columbia, SC 29170
(803) 422-2176 Tel
dwhitt2001@aol.com
Attorney for Appellants

March 3, 2025