THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Common Pleas No. 2023-CP-23-05263

NASSCO, Inc., Respondent,

v.

Byunghwan Chay a/k/a Bjorn Chay and Michelle Mihyang Chay, Defendants,

Of whom Byungwhan Chay is the Appellant.

Appellate Case No. 2024-001489

FINAL BRIEF OF APPELLANT

Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for Byungwhan Chay

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUE ON APPEAL

Whether the Master-in-Equity erred by finding that Mr. Chay's transfer to Ms. Chay of his half-interest ownership in a home was fraudulent in violation of the Statute of Elizabeth?

STATEMENT OF THE CASE

This is an appeal from an order voiding a deed pursuant to the Statute of Elizabeth.

NASSCO, Inc. filed a summons and complaint in the Greenville County Circuit Court against Byunghwan Chay (Mr. Chay) and his ex-wife Michelle Chay on October 11, 2023. R. 13. Specifically, NASSCO sought to set aside a quitclaim deed signed by Mr. Chay which conveyed his fifty-percent ownership of a home to his ex-wife pursuant to the Section 27-23-10 of the South Carolina Code—the Statute of Elizabeth.

NASSCO had previously obtained a $400,000 judgment against Mr. Chay and his company, Natural Solutions, in the United States District Court. R. 89. That judgment was entered on December 2, 2021, and then transcribed in the Greenville County Court of Common Pleas on May 19, 2022. R. 91 – 92.

On May 16, 2022, and again on May 23, 2022, Mr. Chay conveyed his fifty-percent ownership of the house he shared with his wife to her and filed the quitclaim deed in the Register of Deeds Office of Greenville County. R. 97 – 103. NASSCO alleged that this deed transfer was done for the purpose of avoiding its efforts to collect the judgment against Mr. Chay and asked the circuit court to set aside the deed transfer. R. 14 – 18.

Mr. and Mrs. Chay filed their answer on December 4, 2023. Answer. The Greenville Clerk of Court referred the case to the Honorable Charles B. Simmons, Jr., Master-in-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

The case was tried before the Honorable Charles B. Simmons, Jr. on July 2, 2024. Jonathan Waller represented NASSCO and Jason Ward represented Mr. and Ms. Chay. R. 22.

STANDARD OF REVIEW

"An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies." *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). "In an appeal from an action in equity, this Court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

STATEMENT OF FACTS

Mr. and Ms. Chay met in Korea and got engaged. R. 33, ll. 16 – 19. They moved to Greenville, South Carolina a couple of years later and married in 1984. R. 33, ll. 19 – 24. They have two adult children in common. On April 8, 2008, Ms. Chay purchased a home at 100 Hammett Pond Court in Greer, South Carolina for $341,440. R. 93 – 94. Ms. Chay testified that she purchased the home with her own money, but that Mr. Chay asked to be added to the deed. Ms. Chay agreed to add Mr. Chay to the deed because he was her husband and the father of her children and she did not want to cause problems in their marriage. R. 43, l. 22 – 44, l. 7. Even though Ms. Chay said Mr. Chay never contributed any money towards paying for the house, she transferred half of her interest in that home to Mr. Chay on June 18, 2008. R. 44, ll. 8 – 15; R. 95 – 96.

Ms. Chay worked at Honeywell for sixteen years and then started a beauty supply business which she ran for another sixteen years. R. 32, ll. 2 – 25. Ms. Chay sold her business for $380,000 during the COVID pandemic and hoped to retire then. R. 35, l. 13. Ms. Chay testified that she was the sole owner of her business and that Mr. Chay did not own any part of it. R. 58, ll. 4 – 10.

Mr. Chay started several different businesses but according to Ms. Chay, none of them were successful, which put a strain on their marriage. R. 34, l. 13 – 35, l. 12; R. 38, ll. 4 – 6. Ms. Chay testified that Mr. Chay's most recent business was importing gloves from Thailand and Vietnam. R. 39, ll. 8 – 24. The name of that business was Natural Solutions Company International, Inc. Ms. Chay was not aware who Mr. Chay was in business with and was not aware of any debts that he had. In fact, Ms. Chay believed her husband's business was going well. R. 39, l. 25 – 40, l. 6.

Ms. Chay testified that she repeatedly told Mr. Chay not to touch their retirement money. R. 40, ll. 7 – 11. Ms. Chay recalled that Mr. Chay frequently traveled to Thailand and Vietnam for

business. R. 40, ll. 12 – 17. Ms. Chay had "no idea" how much money Mr. Chay owed to creditors at the time of trial or in May of 2022. R. 40, ll. 18 – 23.

Around the time of Mother's Day in 2022—which was May 8, 2022—Mrs. Chay testified that she discovered Mr. Chay was being unfaithful to her and confronted him about it. R. 40, l. 24 – 20, l. 5; R. 42, ll. 3 – 6. Mr. Chay admitted to being unfaithful to Ms. Chay and also told her that he had taken their retirement money without telling her. R. 41, ll. 5 – 9. Ms. Chay was unaware that Mr. Chay had drained their bank account because Mr. Chay handled their finances. She allowed Mr. Chay to handle their finances because he spoke better English than her and was more comfortable going to the bank. R. 41, ll. 10 – 24.

When Ms. Chay found out about Mr. Chay being unfaithful to her and taking their retirement money without her knowledge, she decided to divorce him. R. 42, ll. 7 – 25. Mr. Chay was already spending most of the year overseas in Thailand or Vietnam and Ms. Chay said that within a couple of months of her finding out about Mr. Chay cheating and taking the money, they separated. R. 43, ll. 1 – 18.

Mr. and Ms. Chay had a joint bank account with Wells Fargo. Between December 2020 and May 2022, Mr. Chay deposited nearly $350,000 into that account from money that Ms. Chay earned through the sale of her business. R. 48, ll. 15 – 23; R. 132 – 217. Ms. Chay believed that money was being deposited into her business account but testified she later found out that the money was deposited into her joint account with Mr. Chay without her knowing. R. 44, l. 24 – 45, l. 16. During that same time period, Mr. Chay's company, Natural Solutions, deposited almost $150,000 into that account. However, Mr. Chay's business withdrew almost $600,000 from that same account over that same time period. R. 50, l. 25 – 51, l. 21; R. 132 – 216; R. 218 – 220.

Ms. Chay demanded that Mr. Chay transfer his half interest in their marital home back to her to repay her for the money that he had taken from their retirement account. R. 43, ll. 19 – 21. Ms. Chay recalled that it was "the least thing he could do." R. 43, ll. 21 – 23. Mr. Chay transferred his half interest in the property back to Ms. Chay on May 16 and again on May 23, 2022. R. 97 – 103. The deed listed the consideration as one dollar "and/or other good and valuable consideration." *Id*. Ms. Chay explained that the amount of money Mr. Chay had taken from their accounts was more than half the value of the house but she agreed to accept the deed as satisfaction because she just wanted Mr. Chay out of her life. She said that Mr. Chay "owes a lot more" but that she just wanted to move on with her life. R. 53, l. 19 – 54, l. 11.

When Ms. Chay decided to divorce Mr. Chay because of his infidelity and his withdrawing significant amounts of their money without her knowledge, he moved out of their home at 100 Hammett Pond Court. Ms. Chay said that since then, Mr. Chay spends most of his time overseas in Vietnam or Thailand. When he is in the Greenville area, he lives at his office. R. 52, ll. 5 – 20. Mr. and Ms. Chay's divorce was finalized in September of 2023. R. 221. Although Mr. Chay did not want to be divorced from Ms. Chay, he agreed because it was what Ms. Chay wanted. R. 53, ll. 3 – 5. The divorce decree indicated that there was no marital property or debt. Ms. Chay retained sole ownership of the home. R. 53, ll. 6 – 23.

ARGUMENT

The Master-in-Equity erred by finding that Mr. Chay's transfer to Ms. Chay of his half-interest ownership in a home was fraudulent in violation of the Statute of Elizabeth.

Relevant Facts

At the close of the evidence, Counsel for NASSCO indicated that Mr. Chay still owed approximately $180,000 on the judgment against him and his company, Natural Solutions. R. 77, ll. 18 – 24. Counsel stated that NASSCO was seeking to attach that judgment to a half-interest in the house at 100 Hammett Pond Court. R. 78, ll. 1 – 4.

Defense Counsel argued that the quitclaim deed from Mr. Chay to Ms. Chay was valid because it was in consideration of Ms. Chay forgiving the large amount of money that Mr. Chay had taken from her without her knowledge. R. 79, l. 14 – 80, l. 4. Furthermore, Ms. Chay testified that she did not know anything about Mr. Chay's debts. R. 80, ll. 4 – 19.

Counsel for NASSCO also argued that, because the money that Mr. Chay took was in a joint bank account with Ms. Chay, Mr. Chay was not actually indebted to Ms. Chay for taking that money. Mr. Chay, Counsel argued, had a right to take the money from the joint account. Additionally, Mr. Chay also contributed significant amounts of money to that account from money that he earned. R. 85, l. 11 – 86, l. 11.

Defense Counsel responded that Ms. Chay's testimony was that she did not know the money from the sale of her business was being deposited into their joint account. And even if she had known that, she testified that she and Mr. Chay had an understanding that the money from the sale of her business was to be saved for retirement. R. 86, ll. 13 – 23.

In its final order, the Master found that the conveyance by Mr. Chay to Ms. Chay of his half-interest in the home was without consideration. R. 3 – 4. The Master further found that the

transfer was an intra-family transfer which placed the burden on the Defendants to prove that the transfer was not fraudulent. R. 4. The Master concluded that the Defendants had not presented credible evidence that Mr. Chay was indebted to Ms. Chay or that Ms. Chay had forgiven the debt as consideration for the deed transfer. *Id*. Finally, the Master concluded that the lack of evidence presented by Mr. Chay convinced him that Mr. Chay failed to retain sufficient funds to satisfy the debt owed to NASSCO. The Master therefore found that the deed transfer violated the Statute of Elizabeth and ordered the transfer be voided. R. 5 – 6.

Legal Framework

The Statute of Elizabeth provides that "[e]very . . . conveyance of lands . . . for any intent or purpose to delay, hinder, or defraud creditors . . . must be deemed and taken . . . to be clearly and utterly void." S.C. Code § 27-23-10.

Conveyances must be set aside under the Statue of Elizabeth in two broad circumstances. First, if the conveyance is supported by valuable consideration but is made with the actual intent to defraud and that intent is imputable to the grantee, the conveyance must be set aside. *Future Grp. v. Nationsbank*, 324 S.C. 89, 96, 478 S.E.2d 45, 49 (1996). The second circumstance which requires a conveyance to be set aside is where the conveyance is made without the intent to defraud but also without consideration. *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). When the challenged conveyance was without consideration, "the transfer will be set aside if the plaintiff shows that (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." *Durham v. Blackard*, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993).

"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." *Gardner v. Kirven*, 184 S.C. 37, 54, 191 S.E. 814, 821 (1937).

A. The deed transfer from Mr. Chay to Ms. Chay was supported by consideration.

If a conveyance is supported by consideration, "it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee." *Mathis v. Burton*, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting *Durham v. Blackard*, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)). "The Statute of Elizabeth is concerned with the intent of the grantor who conveys an interest in land." *Oskin*, 400 S.C. at 398, 735 S.E.2d at 464. However, to set aside a deed based on fraudulent intent, it must be shown both that the grantor intended to defraud the creditor, and that the grantee participated in that fraudulent purpose. *McDaniel v. Allen*, 265 S.C. 237, 243, 217 S.E.2d 773, 776 (1975).

In *Windsor Props., Inc. v. Dolphin Head Constr.*, our Supreme Court was faced with a situation in which a husband's company, of which he was the sole owner, deeded property to his wife while he owed money to another company. 331 S.C. 466, 498 S.E.2d 858 (1998). The deed in question read that the property was given for "[f]ive dollars *and no other consideration*." *Id*. at 468, 498 S.E.2d at 859 (emphasis added). The husband had hired an attorney to prepare the deed who testified that he "may have asked if there were any consideration being passed, and [he] was told no." *Id*. The wife testified that she did not pay anything when the deed was given to her. *Id*.

The creditor in *Windsor* filed an action against husband, wife, and husband's company, alleging that the conveyance violated the Statute of Elizabeth because it was made without

consideration. *Id*. at 469, 498 S.E.2d at 859. The special referee found that the deed was supported by consideration and the creditor appealed that finding. *Id*. at 469-70, 498 S.E.2d at 860. The husband and wife argued on appeal that the deed transfer was supported by "thousands of dollars [wife] advanced for the purchase and renovation" of the property in question. *Id*. at 471, 498 S.E.2d at 860. The Supreme Court reversed, finding that there was not clear and convincing evidence that the conveyance was supported by consideration. The Court specifically found that there was no documentary evidence that wife had actually made payments on renovations. Additionally, the Supreme Court noted that wife's position on appeal was different from her position at trial which was that she had already repaid the creditor.

Unlike the deed in *Windsor*, the deed in this case stated that the conveyance was for "One Dollar ($1.00) *and/or other good and valuable consideration*." R. 97 – 103 (emphasis added). Ms. Chay actually divorced Mr. Chay because of his draining their joint bank account in addition to his infidelity. It can hardly be said that this conveyance was not for consideration and bona fide when the conveyance was to settle a marital dispute. In that sense, the conveyance arguably wasn't between family but was rather between adverse litigants in a divorce proceeding. *See Brown v. Butler*, 347 S.C. 259, 264, 554 S.E.2d 431, 433 (Ct. App. 2001) (holding that an estranged wife could have a sufficient interest in marital property titled solely in her husband's name to seek to void a deed transfer by her estranged husband because it could adversely impact her claim of equitable division of the marital estate); *Powell v. Green*, 281 S.C. 358, 362, 315 S.E.2d 183, 185 (Ct. App. 1984) (noting that when divorce proceedings are initiated, each spouse becomes a potential creditor to their share of marital property and thus are covered by the protections of the Statute of Elizabeth).

Compare this case with the situation this Court was presented with in *Albertson v. Robinson*, 371 S.C. 311, 638 S.E.2d 81 (Ct. App. 2006). In *Albertson*, the husband conveyed his half-interest in the marital home to his wife listing five dollars and "love and affection" as the consideration. *Id*. at 314, 638 S.E.2d at 82. The wife testified that all her years of marriage to the husband was the consideration given for the conveyance. The husband, on the other hand, testified that he conveyed his interest in the home to his wife because he was afraid if he did not transfer his interest that his family "would lose everything because of his addiction to alcohol." The husband further testified that he conveyed his interest with the hope of saving their marriage. *Id*. at 316-17, 638 S.E.2d at 83-84. The couple also argued that the conveyance of the property was part of a separation agreement. This Court flatly rejected that claim because the couple did not separate until more than a year after the conveyance was made. *Id*.

In this case, the deed transfer from Mr. Chay to Ms. Chay was made with consideration. Ms. Chay testified that Mr. Chay had taken nearly $400,000 of money she earned through the sale of her business to support his business without her knowledge or permission. R. 41, ll. 5 – 9. Ms. Chay testified that this money was being saved for their retirement and that she repeatedly instructed Mr. Chay not to touch that money. R. 40, ll. 7 – 11. Upon discovering that Mr. Chay had taken the money without her knowledge or permission, she divorced Mr. Chay and demanded that he deed his half-interest in their home back to her to settle their marital dispute and that it was the "least he could do." R. 43, ll. 19 – 23. Mr. and Ms. Chay separated almost immediately because Mr. Chay was already spending significant amounts of time overseas in Thailand and Vietnam. R. 43, ll. 1 – 18. Unlike the couple in *Albertson*, Mr. and Ms. Chay did not remain together after the deed transfer.

Counsel for NASSCO argued that Mr. Chay had a right to withdraw the money from the joint bank account and therefore was not indebted to Ms. Chay. R. 85, l. 11 – 86, l. 11. The Master appeared to adopt that view by referencing our Supreme Court's decision in *Jackson v. Lewis*, 34 S.C. 1, 12 S. E. 560 (1891) in its final order. The *Jackson* Court found that when the consideration for a deed transfer is the forgiveness of debt, the grantee must show that the grantor was actually indebted to the grantee, and that the debt was actually forgiven in exchange for the deed transfer. *Id*. The Master found that Ms. Chay failed to provide evidence that Mr. Chay was indebted to her and further failed to provide evidence that she had forgiven that debt in exchange for the deed transfer. R. 5 – 6. Neither of these positions is supported by the record.

First, there was ample evidence presented by way of Ms. Chay's testimony and the bank records and summaries of the bank records which showed significant withdrawals by Mr. Chay's business without the consent or knowledge of Ms. Chay. R. 44, l. 24 – 45, l. 16; R. 132 – 220. The fact that Mr. Chay's withdrawals may have been technically legal because he was a joint owner of the account fails to recognize the context of their impending divorce. In contested divorce proceedings, the family court "must" give weight to fifteen different factors in determining how to divide the marital estate including the "marital misconduct or fault of either or both parties . . . if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage." S.C. Code § 20-3-620(B)(2).

Both Mr. Chay's infidelity and his withdrawals of significant amounts of money from the joint account without Ms. Chay's knowledge would have most certainly been held against him in a contested divorce. Of course, we will never know exactly how a contested divorce proceeding would have played out because they settled. But the final divorce decree corroborates Ms. Chay's testimony that she forgave what Mr. Chay owed her. The divorce decree indicates no martial

property and no martial debt. The reason for that is because Mr. Chay relinquished his half-interest ownership in their marital home to Ms. Chay to repay his debt to her and so they could both move on with their lives. R. 221.

Finally, to the extent this Court believes that the consideration in this case was "grossly inadequate," it still is consideration sufficient to require a showing of actual intent to defraud. In *Jeffords v. Berry* our Supreme Court found that grossly inadequate consideration was a badge of fraud but specially rejected the claim that grossly inadequate consideration was the same as "without consideration." 247 S.C. 347, 351-52, 147 S.E.2d 415, 418 (1966). Later in *Coleman v. Daniel*, our Supreme Court again treated grossly inadequate consideration as merely a badge of fraud. 261 S.C. 198, 199 S.E.2d 74 (1973). Our Supreme Court's decisions in *Jeffords* and *Coleman* guided its decision in *Royal Z Lanes, Inc. v. Collins Holding Corp.*, where it answered a certified question from the Sixth Circuit Bankruptcy Appellate Panel and conclusively established that grossly inadequate consideration is not alone sufficient to eliminate the requirement that fraud be proven in an action seeking to set aside a deed transfer under the Statute of Elizabeth. 337 S.C. 592, 595-96, 524 S.E.2d 621, 622-23 (1999).

The Master-in-Equity erred in finding that the transfer from Mr. Chay to Ms. Chay was without consideration. This Court should reverse.

B. The deed transfer was made without any intent to defraud NASSCO.

In *Coleman v. Daniel*, our Supreme Court noted that "the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire

estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property." 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973).

The deed transfer in this case was made at the insistence of Ms. Chay, not Mr. Chay. Mr. Chay didn't simply decide to transfer his half-interest in the home to Ms. Chay to hide the property from his creditors. Ms. Chay testified that she demanded he transfer his half-interest to her because she was kicking him out of the house and divorcing him. R. 43, ll. 19 – 23. Mr. Chay retained no benefit of enjoyment of the home. Mr. Chay moved out shortly after the deed transfer and has not lived there since. Ms. Chay lives at the home alone. R. 53, l. 19 – 54, l. 11.

Additionally, the original deed to the home was in Ms. Chay's name alone and the home was purchased with her money alone. R. 44, ll. 8 – 15; R. 93 – 94. When she transferred half of her interest to Mr. Chay, the deed provided that it was supported by consideration of ten dollars. R. 95 – 96. That deed transfer is in line with her testimony that the reason she deeded a half-interest to Mr. Chay to begin with was for the sole reason that Mr. Chay was her husband and father to their children. R. 43, l. 22 – 44, l. 7. It stands to reason that when she decided to divorce Mr. Chay, she demanded that he transfer that interest back. In other words, the transfer of the deed was not a departure from the Chay's previous methods for transferring their ownership interests in the house.

In *Coleman*, a creditor brought an action to set aside a conveyance of real estate by a debtor to his daughter and son-in-law. *Id*. at 200, 199 S.E.2d at 75. In stark contrast to the situation here, the debtor in *Coleman* continued living on the property that he transferred to his family members rent-free after the transfer. *Id*. at 202-03, 199 S.E.2d at 76. The transfer here also stands in stark contrast to what this Court faced in *First Citizens Bank & Tr. Co. v. Scofield*, 286 S.C. 520, 521, 335 S.E.2d 248, 249 (Ct. App. 1985). In *Scofield*, the debtor conveyed his residence to his mother for nothing and continued to live at the residence while his mother lived somewhere else. This

Court found that under those circumstances the transfer violated the Statute of Elizabeth. *Scofield*, 286 S.C. at 522, 335 S.E.2d at 249.

Admittedly, some of the badges of fraud are present in this case like the indebtedness of Mr. Chay and the pendency of litigation against him. However, there is much more evidence indicating that this was not a fraudulent transfer. Mr. Chay does not live at 100 Hammett Pond Court. He hasn't lived there since he and Ms. Chay separated very soon after Ms. Chay's discovery of his martial misconduct and the deed transfer. Ms. Chay lives at the house alone. Mr. Chay has no possessory interest in the house and has no access to the house. The conveyance from Mr. Chay was to repent from his martial wrongdoing and allow Ms. Chay to have full ownership of a house which was rightfully hers all along.

The Master-in-Equity implicitly acknowledged that the transfer was without the intent to defraud but found that intent was not required because of its erroneous finding that the transfer was without consideration. This Court should reverse the Master-in-Equity's order because the deed was made with consideration and without any intent to defraud.

C. Even if the deed was not supported by consideration, NASSCO failed to prove that Mr. Chay lacks sufficient funds to pay the debt.

"If the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors needs be proven." *Windsor Props., Inc. v. Dolphin Head Constr.*, 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998). If a transfer was made without valuable consideration it will be set aside if the creditor shows that "(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 the indebtedness to the [creditor] in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt." *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting *Durham v. Blackard*, 313 S.C. 432, 437, 438 S.E.2d

259, 262 (Ct. App. 1993)); *see also Gardner v. Kirven*, 184 S.C. 37, 54, 191 S.E. 814, 821 (1937) ("Where a conveyance is made without an actual intent to defraud but without consideration, it is said that the conveyance will stand if the grantor reserves a sufficient amount of property to pay his creditors").

The only evidence presented that Mr. Chay lacks the funds to pay the remaining debt he owes to NASSCO was speculative at best. Ms. Chay testified that she did not recall the last time she had spoken to Mr. Chay but that she cussed him out when she found out he had asked their adult son for money. She said she and Mr. Chay do not speak on the phone or in person but text each other occasionally. R. 56, l. 25 – 57, l. 6. She further testified that she did not know practically anything about Mr. Chay's financial situation but that she "guessed" it was "not good" because he asked their son for money and was still trying to collect money from people who owe him in Thailand. She noted that Mr. Chay was not present for court the day of the trial because he was stuck in Thailand. R. 57, ll. 7 – 22.

Contrast the evidence presented in this case with what was presented to this Court in *Albertson v. Robinson*. In that case, the debtor testified that the interest in the house that he transferred to his wife was "the last little bit [he] had." 371 S.C. at 318, 638 S.E.2d at 84. The debtor in Albertson further testified that the only thing he kept was his clothes and that he did not have the money to pay the judgment against him. *Id*. Here, there was simply no evidence presented that Mr. Chay lacks the money to pay the judgment against him *now*. *See Mathis*, 319 S.C. at 265, 460 S.E.2d at 408. The Master erred in concluding that Mr. Chay lacks the funds sufficient to pay the remaining judgment and this Court should reverse.

CONCLUSION

By reason of the foregoing arguments, this Court should reverse the order by the Master-in-Equity and reinstate the deed transfer by Mr. Chay to Ms. Chay.

s/Adam Ruffin
Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for Byungwhan Chay

This 4th day of August 2025.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master-In-Equity

Common Pleas No. 2023-CP-23-05263

NASSCO, Inc., Respondent,

v.

Byunghwan Chay a/k/a Bjorn Chay and Michelle Mihyang Chay, Defendants,

Of whom Byungwhan Chay is the Appellant.

Appellate Case No. 2024-001489

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, undersigned counsel hereby certifies that a true copy of the final brief of appellant in the above-referenced case has been served upon Jonathan Waller and Aaron Angell at the primary e-mail addresses listed in the Attorney Information System (AIS), this 4th day of August 2025.

s/Adam Ruffin
Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for Byungwhan Chay