

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

Ned Gregory, )  
Plaintiff, )  
vs. )  
Howell Jackson Gregory, )  
Defendant. )

Case No. 2002-CP-26-1706

ORDER

FILED  
HORRY COUNTY  
2013 MAR -5 AM 10:11  
MELANIE HUGGINS-WARD  
CLERK OF COURT

This case came before me for hearing on December 10, 2012. Defendant has moved to alter the amount of Plaintiff's 2006 judgment against him. For reasons stated below, this Court denies his motion.

**FINDINGS:**

In his will, Ned Gregory, Sr. left his sons, Ned Gregory, II and Howell Jackson Gregory (Jack Gregory), equal undivided interests in a house and lot in Myrtle Beach and commercial properties in Lancaster.

In 2000, Ned Gregory sued in Lancaster County for partition of both properties and for unpaid rent and an accounting. In 2002, the case was referred to the Horry County Master, Stanton Cross, and given its present case number.

On April 25, 2006, Judge Cross issued his decision. He awarded Plaintiff \$20,900.00 rent for Defendant's use of the Myrtle Beach house, \$21,959.47 on his accounting claim and he ordered the Defendant to pay Plaintiff \$2,228.00.

This amount, \$20,900.00 + 21,959.47+ \$2,228.00 totalling \$45,087.47, was enrolled as the amount of the judgment. It is still the amount on record.

The Order was not appealed. Neither side filed motions seeking alteration of the judgment or a new trial. However, on August 10, 2006, Judge Cross issued what is styled a Nunc Pro Tunc Order. It purports to modify the April 25, 2006 Order by giving Jack Gregory credits that would reduce the judgment. There are no exhibits attached to the Order and there is nothing setting out how the payments mentioned in the Order came to the Court's attention.

At the hearing on the present motion, Jack Gregory stated he had approached Judge Cross *ex parte* with some bills he had paid and asked Judge Cross to reduce the judgment by the amount of these bills. When the Court asked Clifford Welsh, Ned Gregory's attorney in 2006, if he was aware of the discussion between the Judge and

Jack Gregory before it took place, he said he had not been told or notified of it. He said he had never seen any documents explaining where the amounts in the Nunc Pro Tunc Order came from. He did receive a copy of the Nunc Pro Tunc Order after it was signed. Welch immediately filed a motion challenging the Order. That motion was never heard, however.

After the Nunc Pro Tunc Order, the judgment of record remained \$45,087.47.

In 2008, Ned Gregory filed a fraudulent conveyance action against Jack Gregory in an attempt to collect the judgment in this case. Prior to filing, he obtained a copy of the transcript of judgment from the Clerk of Court showing the judgment as \$45,087.47.

On September 24, 2012, the day before the trial of the fraudulent conveyance suit, Jack Gregory filed the present motion. It seeks to have the judgment reduced by the credits given him in the Nunc Pro Tunc order.

**ORDER:**

Though the Defendant does not specify under which rule he brings his motion, he can only get the relief he seeks under Rule 60 SCRPC. Two possible sections would allow a judgment to be altered:

Rule 60(b)(1) SCRPC, which allows a court to correct a judgment when it finds mistake, inadvertence, surprise, or excusable neglect and,

Rule 60(a) SCRPC, which allows correction of clerical mistakes.

Rule 60(b)(1) is not available to the Defendant. Rule 60 (b)(1) motions must be filed within one year of entry of the challenged judgment. This motion comes six years after the Nunc Pro Tunc order and four years after the Plaintiff obtained the transcript of judgment for his fraudulent conveyance lawsuit.

Rule 60 (a), SCRPC likewise is not available to Defendant. While it has no time limit, Rule 60 (a), can only be used to correct a "mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function. While a court may correct mistakes or clerical errors in its own process to make it conform to the record, it cannot change the scope of the judgment." Dion v. Ravenel, Eiserhardt Associates, 449 S.E.2d 251 @ 253-254 (S.C. Ct. App., 1994).

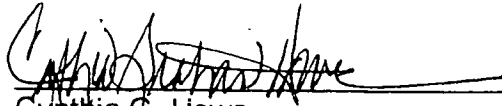
In short, Defendant can not now seek to correct the amount of the 2006 judgment.

Though it was not necessary to reach the enforceability of the Nunc Pro Tunc Order to decide this motion, the Court notes that Order is of questionable validity. See, e.g., Ex Parte Strom, 343 S.C. 257 (2000) and Heins v. Heins, 543 S.E.2d 224 (S.C. Ct App. 2001).

Costs associated with the hearing of this case, including court reporter fees are charged to Defendant.

DEFENDANT'S MOTION IS DENIED.

SO ORDERED:

  
Cynthia G. Howe C  
Horry County Master-in-Equity

March 14, 2013.

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GAH