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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master-In-Equity

Opinion No. 2026-UP-057 (S.C. Ct. App. filed February 11, 2026)

NASSCO, Inc., Respondent,

v.

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

Of whom Byunghwan Chay is the Petitioner.

Appellate Case No. 2024-001489

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

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

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on April 16, 2026.

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred in holding that Mr. Chay lacked standing to appeal as an "aggrieved party" under Rule 201(b), SCACR, where the Master-in-Equity's order voided Mr. Chay's conveyance of his property interest, thereby directly affecting his legal right to dispose of his property?

2.

Whether the Master-in-Equity erred in 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 petition for a writ of certiorari stems 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). NASSCO sought to set aside a quitclaim deed signed by Mr. Chay which conveyed his half-ownership of a home to his ex-wife pursuant to S.C. Code § 27-23-10—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).

The Greenville Clerk of Court referred the case to the Honorable Charles B. Simmons, Jr., Master-in-Equity. The case was tried on July 2, 2024. Jonathan Waller represented NASSCO and Jason Ward represented Mr. and Ms. Chay. (R. 22).

Ms. Chay testified at the hearing that she married Mr. Chay in 1984, and she purchased the home that is the subject of this litigation on April 8, 2008. (R. 93 – 94). Ms. Chay purchased the home with her own money, but 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).

Ms. Chay started a beauty supply business which she ran for another sixteen years which she sold during the COVID pandemic for $380,000. She hoped to retire with this money. (R. 35, l. 13). Ms. Chay was the sole owner of her business and 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. (R. 34, l. 13 – 35, l. 12; R. 38, ll. 4 – 6). 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). She also 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). In May of 2022, Ms. Chay discovered that 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 and to taking 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, 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.

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. (R. 52, ll.

5 – 20). 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). Mr. and Ms. Chay's divorce was finalized in September of 2023. (R. 221). 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).

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).

The Court of Appeals affirmed the Master-in-Equity's order. *NASSCO, Inc. v. Chay*, Op. No. 2026-UP-057 (S.C. Ct. App. filed Feb. 11, 2026). The Court of Appeals did not reach the merits of Mr. Chay's arguments. Instead, the Court of Appeals held that Mr. Chay lacked standing to appeal because he "does not qualify as an 'aggrieved party'" under Rule 201(b), SCACR. The Court of Appeals reasoned that Mr. Chay had relinquished his interest in the residence and was divorced from Ms. Chay at the time NASSCO commenced litigation.

Mr. Chay filed a petition for rehearing on February 26, 2026, which was denied on April 16, 2026.

ARGUMENT

1.

<u>The Court of Appeals erred in holding that Mr. Chay lacked standing to appeal as an "aggrieved party" under Rule 201(b), SCACR, because the Master-in-Equity's order voided Mr. Chay's conveyance of his property interest, thereby directly affecting his legal right to dispose of his property.</u>

A. The Court of Appeals' holding that Mr. Chay lacked standing is inconsistent with the purpose of the Statute of Elizabeth and principles of property rights.

The Court of Appeals held that Mr. Chay lacked standing to appeal, finding that he "does not qualify as an 'aggrieved party.'" *Chay* at 2. Specifically, the Court concluded that "[a]t the time NASSCO commenced the present litigation, [Mr. Chay] had relinquished his interest in the residence, and the family court had entered a final order divorcing [Mr. Chay] and [Ms. Chay]; therefore, [Mr. Chay] was not aggrieved by the master-in-equity's order because it did not affect his rights or interest." *Id*.

The purpose of the Statute of Elizabeth is to undo relinquishments of interests in property to protect a creditor's access to the property to satisfy a debt. *See* S.C. Code § 27-23-10 ("[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"). It is therefore unsurprising that Mr. Chay had relinquished his interest in the residence prior to NASSCO bringing the current litigation. That relinquishment was *the subject of the litigation*. NASSCO brought the current litigation for the sole purpose of undoing Mr. Chay's relinquishment in the residence. This is true of all cases brought pursuant to the Statute of Elizabeth that seek to void an earlier transfer of property. NASSCO was successful in this endeavor resulting in the voiding of Mr. Chay's relinquishment of his interest in the property. Accordingly, Mr. Chay is an aggrieved party. *See* S.C. Code Ann. §

18-1-30 ("Any party aggrieved may appeal"); *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970) ("an aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property").

The voiding of a conveyance pursuant to the Statute of Elizabeth is an injury to the person who sought to convey the property in the manner they wished to convey it. One of the "bundle of rights" that a property owner possesses is the right to transfer the property to another of his choosing. *See Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 295, 569 S.E.2d 371, 376 (Ct. App. 2002) ('"an important element of the ownership of property is the right of the owner to convey it on any terms within her intention'") (internal alteration omitted) (quoting *Avant v. Johnson*, 231 S.C. 119, 133, 97 S.E.2d 396, 403 (1957); *Rogers-Kent, Inc. v. Gen. Elec. Co.*, 231 S.C. 636, 644, 99 S.E.2d 665, 668 (1957) ('"Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, *and disposal*. Anything which destroys one or more of these elements of property to that extent destroys the property itself'") (emphasis added) (quoting *Gasque v. Conway*, 194 S.C. 15, 21, 8 S.E.2d 871, 873 (1940)).

If the Court of Appeals were correct that a party who relinquished his rights in a property lacks standing to appeal a lower court's order which voided this relinquishment on the basis that the party had relinquished his right to the property, a debtor/grantor of property could never have standing to appeal a lower court's ruling voiding a conveyance on the basis that it violated the Statute of Elizabeth. The attempted transfer of an ownership interest in property is a prerequisite to a Statute of Elizabeth claim. A court's order which voids the transfer exposes the asset to seizure by the creditor and deprives the debtor/grantor of his legal right to dispose of the property as he wishes. Thus the debtor/grantor is aggrieved when a lower court voids his attempted conveyance.

B. The Court of Appeals' holding is inconsistent with prior case law allowing debtor/grantors to appeal lower court rulings that have voided attempted transfers of property under the Statute of Elizabeth.

The Court of Appeals' holding in this case is inconsistent with South Carolina case law. Consider *First Citizens Bank & Tr. Co. v. Park at Durbin Creek*, 419 S.C. 333, 797 S.E.2d 409 (Ct. App. 2017), in which a debtor/grantor transferred, i.e., relinquished, his ownership interests in real estate to an LLC. *Id*. at 337, 797 S.E.2d at 411. The debtor also transferred his ownership interests in the LLC to his ex-wife and daughters. *Id*. at 338, 797 S.E.2d at 412. When the creditor (First Citizens) sought to collect their debt, it discovered the transfers and asked the circuit court to set aside the transfers on the grounds that they violated the Statute of Elizabeth. *Id*.

The circuit court in *Park at Durbin Creek* set aside the transfers and the debtor/grantor appealed. *Id*. at 338-39, 797 S.E.2d at 412. While the Court of Appeals affirmed the circuit court's order setting aside the transfers on the merits, it did not hold—as it did in Mr. Chay's case—that the debtor/grantor lacked appellate standing because he had relinquished his rights in the property. *Id*. at 343, 797 S.E.2d at 414. This makes sense because the relinquishment of the interest in the property was voided by the lower court. Accordingly, the interest in the property relinquished was reinstated by the lower court's order.

Consider also *Judy v. Judy*, 403 S.C. 203, 742 S.E.2d 672 (Ct. App. 2013). In *Judy*, the debtor/grantor transferred his interests in various pieces of real and personal property to his sons, thereby relinquishing his own property interests in them. *Id*. at 206-07, 742 S.E.2d at 674. The creditors sued to set aside the conveyances as having violated the Statute of Elizabeth and the lower court voided the conveyances. *Id*. at 207, 742 S.E.2d at 674. Interestingly, in *Judy*, the debtor/grantor argued on appeal that the creditors did not have standing because they were subsequent creditors and were not protected by the Statute of Elizabeth. The *Judy* Court disagreed,

finding that subsequent creditors are protected by the Statute of Elizabeth and do have standing to seek to void a conveyance to collect a debt. *Id*. at 209-10, 742 S.E.2d at 676. Nowhere in the *Judy* opinion is there any suggestion that the debtor/grantor lacked appellate standing because he relinquished his rights in the property.

The Court of Appeals did not cite to any case that found a debtor/grantor lacked appellate standing when a lower court has voided a transfer that he attempted on the basis that he relinquished his interest in the property. The closest thing the Court of Appeals pointed to was its decision in *Powell v. Green*, 281 S.C. 358, 315 S.E.2d 183 (Ct. App. 1984), a case that was not about the Statute of Elizabeth (defrauding of creditors) but was instead about section 27-23-20 (defrauding of purchasers). Even if *Powell* had dealt with the Statute of Elizabeth, the Court in *Powell* only held that a wife who transferred her interest in the marital home to her sons during divorce proceedings was not an indispensable party to a subsequent lawsuit brought by the sons to partition the property held by the ex-husband. *Id*. at 359, 315 S.E.2d at 183-84. The holding in *Powell* does not suggest that a debtor/grantor whose attempted transfer of property is voided by a lower court lacks *appellate standing* to appeal the voiding of his attempted transfer. The Court of Appeals erred in finding Mr. Chay lacked appellate standing and this Court should grant this petition for a writ of certiorari and reverse.

C. Mr. Chay is aggrieved by the lower court's decision because it voided his attempt to transfer his half-interest ownership in a home to his ex-wife.

Here, Mr. Chay sought to transfer his ownership interest in property to his ex-wife. Transferring property you own in a manner you see fit is a legal right. The Master-In-Equity's ruling voided this transfer. *See Alderman v. Alderman*, 178 S.C. 9, 44, 181 S.E. 897, 911 (1935) ("One of the main incidents of property is its transferability. The power of disposing of stock, like the power of disposing of any other property, is a common right, and necessarily attaches to

ownership"). It is difficult to see how the Master-In-Equity's ruling does not bear directly upon Mr. Chay's legal right to transfer his interest in the property. The Master-In-Equity's ruling reinstated Mr. Chay's half-interest in the marital home—an interest Mr. Chay attempted to relinquish to a specific person for a specific reason. To the extent that he relinquished his interest in the property, the order under appeal has undone that relinquishment. The Court of Appeals' conclusion that he lacks appellate standing because he relinquished his interest in the property is belied by the lower court's ruling itself which found that Mr. Chay's relinquishment was void.

Accordingly, Mr. Chay is an aggrieved party. The Court of Appeals erred in finding Mr. Chay lacked appellate standing and this Court should grant this petition for a writ of certiorari to ensure litigants are not wrongly shut out of court based on erroneous interpretations of standing doctrine.

2.

The Master-in-Equity erred in 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.

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.*, this 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. This Court reversed, finding that there was not clear and convincing evidence that the conveyance was supported by consideration. This Court specifically found that there was no documentary evidence that wife had actually made payments on renovations. Additionally, this 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 the Court of Appeals 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. The Court of Appeals 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 this 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). Respectfully, 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. Furthermore, 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* this Court found that grossly inadequate consideration was a badge of fraud but specifically 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*, this Court again treated grossly inadequate consideration as merely a badge of fraud. 261 S.C. 198, 199 S.E.2d 74 (1973). This 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 grant this petition for a writ of certiorari and order full briefing on this issue.

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

In *Coleman v. Daniel*, this 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 did not 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 the Court of Appeals 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. The Court of Appeals found that under those circumstances the transfer violated the Statute of Elizabeth. *Scofield*, 286 S.C. at 522, 335 S.E.2d at 249.

Although some of the badges of fraud are present in this case, 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 grant this petition for a writ of certiorari and 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 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. This Court should grant this petition for a writ of certiorari and reverse.

CONCLUSION

Based upon the foregoing arguments, Mr. Chay respectfully requests that this Court grant his petition for writ of certiorari to the Court of Appeals to allow full briefing on the questions presented.

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 Byunghwan Chay

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