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SC Court of Appeals

BRIEF OF APPELLANT/RESPONDENT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Trial Court Case No. 2017CP4202374

Appellate Case No. 2025-002050

Richard Lewis and Walter
Lewis,
Respondents/Appellants

v.

Robert M. Errato, Quinnipiac Associates,
Inc. and Upwards Builders, Inc.,
Defendants

of which Robert M. Errato is the
Appellant/Respondent

REPLY BRIEF OF APPELLANT/RESPONDENT, ROBERT M. ERRATO

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ARGUMENT

I. RESPONDENTS/APPELLANTS' APPEAL OF THE DENIAL OF THEIR MOTION FOR INJUNCTION AND CONSTRUCTIVE TRUST IS FRIVOLOUS AND SHOULD BE DENIED

A. Respondents Have Failed To Demonstrate Reversible Error In The Denial Of Constructive Trust And Injunctive Relief

The threshold problem with Respondents' appeal is not merely the weakness of their underlying claims. It is their failure to demonstrate that the trial court committed reversible error.

Respondents appealed from orders denying a constructive trust and injunctive relief concerning property owned by Quinipiac Associates, Inc. Yet their Responsive Brief devotes little meaningful analysis to the legal rulings they seek to overturn. Instead, Respondents focus primarily upon conservatorship issues raised by Appellant, while providing almost no substantive discussion of the constructive trust and injunction claims that form the basis of their own appeal. At this point, this Court should consider Respondents' arguments in favor of their appeal as abandoned and uphold the ruling of the trial court. *See Bell v. Bennett*, 307 S.C. 286, 294-95, 414 S.E.2d 786, 791 (Ct. App. 1992) (holding issues not raised in appellate brief are deemed abandoned and prior rulings on those issues constitute the law of the case).

Most notably, Respondents never explain why the trial court's reasoning was incorrect. They never address the legal deficiencies identified by the trial court. They never meaningfully discuss the elements of a constructive trust. They never analyze the standards governing injunctive relief. They never confront the repeated findings that they failed to present new facts, new law, or any basis for a different result. The issue before this Court is not whether Respondents disagree with the trial court. The issue is whether they have demonstrated

reversible error. Respondents' brief failed to address this issue, and, thus, it should be considered abandoned at this time.

Respondents devote substantial effort to defending the authority of the conservators and responding to Appellant's arguments. Yet the orders from which they appealed receive remarkably little attention. As a result, Respondents have effectively asked this Court to revisit the trial court's rulings without ever explaining why those rulings were legally incorrect. That failure is significant because appellate review begins with the presumption that the trial court acted correctly. Respondents have not met that burden.

For that reason alone, the orders denying constructive trust and injunctive relief should be affirmed.

B. Respondents Cannot Establish The Legal Requirements For A Constructive Trust Or Injunctive Relief

Even if this Court elects to reach the merits, the trial court was correct in denying Respondents' requests for constructive trust and injunctive relief. Such decision should be upheld on appeal.

Throughout this litigation, Respondents have attempted to transform allegations concerning development work, anticipated profits, and business expectations into ownership rights in property owned by Quinnipiac Associates. The trial court repeatedly rejected that theory and consistently recognized that this dispute concerns alleged profits rather than ownership of real property. That distinction is fundamental. Respondents may believe they are entitled to compensation. They may believe they contributed labor, services, expertise, or resources to the development project. They may ultimately pursue claims seeking monetary recovery. None of those allegations, however, establishes ownership of the Property itself.

The Property was acquired and held by Quinnipiac Associates. Respondents have never produced stock certificates, shareholder records, corporate resolutions, K-1 forms, ownership agreements, deeds, or any other documentary evidence establishing ownership of either Quinnipiac Associates or the Property. Without ownership, Respondents' equitable claims necessarily fail.

South Carolina law recognizes that a constructive trust is an extraordinary equitable remedy imposed only where property has been acquired or retained through fraud, abuse of confidence, breach of fiduciary duty, or other unconscionable conduct. *See, e.g., SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500 (1990) ("A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty."); *Halbersberg v. Berry*, 302 S.C. 97, 106 (Ct. App. 1990) ("A constructive trust arises against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained or holds the right to property which he ought not in equity and good conscience hold and enjoy.").

Respondents never establish those elements in order to prove they are entitled to a constructive trust. They identify no fraudulent transfer of title. They identify no wrongful conveyance of ownership. They identify no abuse of confidence resulting in Quinnipiac obtaining title. They identify no breach of fiduciary duty through which Quinnipiac acquired ownership of the Property. Most importantly, they identify no evidence that Quinnipiac wrongfully acquired title in the first place.

Instead, Respondents repeatedly return to allegations concerning work performed and profits expected. Those allegations may support a claim for damages, but they do not support a constructive trust, which is why the trial court denied the request for a constructive trust over and over again. The trial court's ruling should be upheld as legally correct.

The same defect that undermines a constructive trust also undermines Respondents' request for injunctive relief. Injunctive relief is intended to protect legally cognizable rights from irreparable harm. It is not a mechanism for securing payment of alleged debts or preserving speculative future recoveries. In order to prove that Plaintiffs should be entitled to an injunction, they would have needed to show the following: "(1) [they] will suffer immediate, irreparable harm without the injunction; (2) [they have] a likelihood of success on the merits; and (3) [they have] no adequate remedy at law." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366 (2011). Respondents failed in this argument, as they have not and cannot prove any of these elements.

Respondents' claims remain fundamentally claims for money and a split in the profits of the project, if any and can be proven. If Respondents ultimately prevail, monetary damages remain available. Because an adequate remedy at law exists, and because Respondents lack a legally cognizable ownership interest requiring protection, the trial court correctly denied injunctive relief.

Thus, the trial court's ruling to deny the constructive trust and injunctive relief should be upheld on appeal. Not only did Respondents fail to provide any arguments in favor of their appeal, but Respondents could also not provide any reason why the trial court erred in denying their request continuously through the years. The denial should be affirmed.

C. The Trial Court Repeatedly Found That Respondents Presented No New Facts, No New Law, And No Basis For A Different Result

The procedural history independently supports affirmance. This Court is not reviewing a single denial of equitable relief. Rather, it is reviewing multiple rulings issued by multiple judges over multiple years, all reaching the same conclusion.

When Respondents renewed their request for equitable relief, Judge Curtis expressly found: “I find the current motion is nearly identical to the previous motion filed by Plaintiffs and denied by this court on May 14, 2021. Plaintiffs have failed to show any new or different grounds that would compel another result.” That finding goes directly to the heart of this appeal. The court was not presented with newly discovered evidence. The court was not presented with newly discovered ownership rights. The court was not presented with newly developed legal authority. Instead, the court was presented with the same request for relief based upon substantially the same allegations.

The same conclusion was reached again when Respondents sought reconsideration. Judge Knie found that the Court was “unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.”

These findings deserve substantial weight. Two separate circuit court judges independently concluded that Respondents had presented no new facts, no new law, no overlooked authority, and no basis for disturbing prior rulings. Respondents never meaningfully addressed those findings because the record does not permit them to do so.

The principle of finality exists to prevent precisely this type of repetitive litigation. Judicial decisions must eventually become final. Litigants cannot repeatedly file substantially identical motions, receive substantially identical rulings, and then use the latest denial as a

vehicle to relitigate issues that could have been appealed years earlier. Nothing material changed between the original denial and the orders now before this Court. The Property remained owned by Quinnipiac Associates, and Respondents still lack ownership rights in the Property. The legal theories and the facts remained unchanged with every filing of the motions by Respondents. Respondents' disagreement with the result has continued through the years, but that disagreement does not provide a basis for reversal. The trial court's ruling must be upheld.

II. ERRATO'S APPEAL SHOULD BE GRANTED AND THE DENIAL OF HIS MOTION FOR INJUNCTION SHOULD BE REVERSED

A. Registration Of A Foreign Conservatorship Order Does Not Expand Authority Under South Carolina Law

Unlike Respondents' appeal, Errato's appeal presents substantial legal questions concerning conservator authority and fiduciary obligations.

Whether a conservator possesses authority under South Carolina law presents a question of statutory interpretation reviewed *de novo*. See *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 6 (2018) ("Questions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below.")

Respondents repeatedly rely upon the Connecticut conservatorship order and its subsequent registration in South Carolina. Appellant has never challenged the validity of the Connecticut proceedings, the appointment of the conservators, or the registration process itself. The issue is not whether the order exists. The issue is whether registration automatically resolves questions concerning authority under South Carolina law. Errato argues that it does not.

Registration permits recognition of a foreign conservatorship order. Registration does not, however, expand authority beyond that recognized by South Carolina law. Registration does not create powers not otherwise granted by South Carolina statutes. Registration does not

eliminate fiduciary obligations. Registration does not insulate conservators from judicial scrutiny. Registration does not answer questions concerning conflicts of interest. Recognition is not expansion.

Consequently, this Court must still determine whether South Carolina law authorizes the conduct at issue and whether the conservators may participate free from disabling conflicts. Respondents' argument improperly assumes that registration resolves all questions of authority. Errato argues, however, that South Carolina law requires more. Thus, Errato argues that Respondents have not satisfied their burden and, thus, Errato's motion for injunction should have been granted by the trial court. Errato asks this Court to reverse.

B. *Murray By Murray v. Murray Controls The Conservator Authority Issue*

The most significant legal authority in this appeal is *Murray by Murray v. Murray*, 310 S.C. 336 (1993), which was cited in Errato's original brief.

Respondents devote considerable effort to distinguishing *Murray* because it arose in the context of divorce litigation. That argument focuses upon factual differences while ignoring the Supreme Court's actual reasoning. The Court held in *Murray* that conservators should not be allowed to represent the interests of their ward in a personal action. This case was not decided because the underlying action involved domestic relations. *Murray* was decided, however, because the Supreme Court recognized an important limitation upon conservator authority.

The Court stated unequivocally: "There is no statutory authority allowing a conservator to maintain an action with regard to personal matters." *Murray, supra*, 310 S.C. at 338. That statement lies at the center of this appeal. Respondents devote substantial effort to explaining why this case differs factually from *Murray*, expressly stating that divorce actions do not protect estate assets. It should be clear, however, that financial concerns are usually a large part of a

divorce action, as the parties are separating their finances and possibly seeking alimony or child support. Thus, *Murray* clearly involves financial considerations.

Respondents attempt to distinguish *Murray* factually while never identifying any South Carolina statute expressly authorizing conservators to prosecute the personal business, contract, fraud, accounting, fiduciary-duty, and related claims involved in this litigation. Respondents cite statutes describing conservator powers generally. Notably absent, however, is any statute expressly authorizing conservators to prosecute the personal disputes presented here. That statutory silence is precisely what concerned the Supreme Court in *Murray*.

Instead, Respondents assume that because money may ultimately be involved, the litigation necessarily concerns estate administration. *Murray* rejects such assumptions. *Murray* requires statutory authority, but Respondents identify none.

While conservators unquestionably possess authority to preserve assets, manage property, and conduct financial affairs, those powers do not automatically extend to every personal cause of action merely because money is involved. Again, clearly, divorce actions involve money, but the Supreme Court in *Murray* stated that a conservator could not maintain such action. The claims in this case arise from disputed personal business relationships and decades of interactions among private parties. The fact that financial recovery may be sought does not automatically transform those claims into ordinary estate administration.

Because Respondents fail to identify statutory authority overcoming *Murray*'s limitation, *Murray* remains controlling. Thus, this Court should follow the precedent and rule that the conservators cannot maintain this personal action on Walter's behalf.

C. The Unresolved Conflicts Of Interest Require Reversal

Even if this Court concludes that a conservator may participate in this litigation, the unresolved conflict issues independently require reversal.

The issue in this appeal is not whether Robin French ultimately acted improperly. The issue is whether the structure of the fiduciary relationship permits independent judgment, free from competing obligations. Robin French is alleged to have served as a founding member of RG Lewis Construction (“RGL”), an accountant involved in project finances, a custodian of financial records, and an individual possessing knowledge concerning disputed loans, disputed accounting records, disputed project expenses, and disputed financial transactions. Those roles create concerns that extend far beyond ordinary witness testimony.

A witness may testify concerning disputed facts. A fiduciary must exercise independent judgment solely for the benefit of the protected person. The existence of a conflict does not require proof of wrongdoing. A conflict exists whenever competing obligations or divided loyalties may impair independent judgment. *See, e.g., United States v. Miller*, 463 F.2d 600, 602 (1st Cir. 1972) (“The term ‘conflict of interest’ bespeaks a situation in which regard for one duty tends to lead to disregard of another.”); *see also* Black’s Law Dictionary, 3d ed, p. 88 (“Conflicts of interest may be actual or potential.... A potential conflict arises where conflicting interests may develop but do not [yet] exist....”).

The question before this Court is therefore not whether misconduct has been proven. The question is whether an individual with direct involvement in disputed financial matters can simultaneously exercise independent fiduciary judgment on behalf of the protected person in litigation involving those same matters.

Respondents never meaningfully answer that question. Instead, they attempt to characterize the issue as a discovery matter. It is not. The issue concerns fiduciary independence, the appearance of impartiality, and the ability of a fiduciary to exercise judgment free from competing obligations.

Because those concerns remain unresolved, because registration does not answer them, and because *Murray* limits conservator authority in personal matters, the denial of Appellant's motion should be reversed and a hearing should be held to determine such issues.

CONCLUSION

In light of the foregoing and as previously filed, Appellant/Respondent Robert M. Errato respectfully requests that this Court reverse the denial of his Motion for Injunction and uphold the denial of the Motion for Injunction filed by Respondents/Appellants.

Respondents appealed from orders denying constructive trust and injunctive relief but failed to demonstrate reversible error. Even if the Court reaches the merits, Respondents cannot establish ownership of the Property, cannot satisfy the elements of a constructive trust, cannot satisfy the requirements for injunctive relief, and cannot overcome the trial court's repeated findings that no new facts, no new law, and no basis for relief existed.

At the same time, Appellant presents substantial legal questions concerning conservator authority, the limitations recognized in *Murray v. Murray*, the effect of foreign conservatorship registration, and unresolved conflicts of interest involving fiduciaries who possess direct involvement in matters that are themselves subjects of the litigation.

For these reasons, Appellant respectfully requests that this Court affirm the denial of Respondents' motions for injunction and constructive trust, reject Respondents' appeal in its

