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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable 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.

RESPONDENTS/APPELLANTS' RESPONSIVE BRIEF
IN OPPOSITION TO APPELLANT/RESPONDENT'S AMENDED INITIAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

Whether the trial court properly denied Appellant/Respondent's Motion for Injunction seeking to bar co-conservators Robin French and Carol Lewis from representing Walter Lewis's interests, where the Connecticut conservatorship order expressly authorizes the co-conservators to manage claims and litigation relating to Walter Lewis's financial affairs, including this action.

STATEMENT OF THE CASE

Respondents/Appellants Richard Lewis and Walter Lewis (collectively "Lewis" or "Respondents/Appellants") respectfully submit this Responsive Brief in opposition to the Amended Initial Brief of Appellant/Respondent Robert M. Errato ("Errato") seeking to bar co-conservators from representing Plaintiff.

This case arises from a 1997 business arrangement in which Walter Lewis and Richard Lewis performed twenty years of development work on the Forest Springs residential subdivision in Boiling Springs, South Carolina and have never been compensated by their partner.

South Carolina resident Richard Lewis and his father Walter Lewis filed a Summons and Complaint on July 13, 2017, alleging Breach of Contract, Breach of Contract Accompanied by Fraudulent Act, Breach of Covenant of Good Faith and Fair Dealing, Fraud, Accounting, Breach of Fiduciary Duty, Dissolution, and Declaratory Judgment. Plaintiffs amended their Complaint to add Defendant Upward Builders and causes of action for Unjust Enrichment, Quantum Meruit, Interference with a Contractual Relationship, Constructive Trust, Injunction, and Fraudulent Conveyance against their partner. At the time of the filing of the original Summons and Complaint, July 13, 2017, Plaintiffs filed a Lis Pendens on 62 lots remaining unsold in the Forest Springs Subdivision at issue in the case.

Plaintiffs allege that they had a business relationship with or ownership in Quinnipiac Associates, Inc. and/or with Robert M. Errato for development of the raw land now known as Forest Springs Subdivision in Boiling Springs, South Carolina. Plaintiffs allege that over the course of 20 years Plaintiffs designed the subdivision, obtained plats, surveys, and county approvals; installed utilities and infrastructure such as electric, water, sanitary sewer, storm sewer, and roads. Plaintiffs allege that Robert M. Errato and Quinnipiac Associates, Inc. handled all the

financial records of the development and agreed to split the proceeds once the project was profitable.

In late 2015 Defendant Upward Builders approached Richard Lewis with a \$1 million offer to purchase the remaining lots unbuilt in the subdivision. Richard Lewis shared the offer with Robert M. Errato who refused to respond to that offer and otherwise indicated that he was not interested. As alleged in their Complaints, Plaintiffs became concerned that Mr. Errato and/or Quinnipiac Associates was not going to honor the relationship and agreement between the Plaintiffs and Defendants and filed the present Summons and Complaint and placed the Lis Pendens on the property to prevent Mr. Errato from selling the property without consulting with, meeting with, or compensating his partners.

In fact, the Plaintiffs' concerns were born out when it was discovered that Robert Errato sold three lots to Upward on July 4, 2017, and the remaining unbuilt lots pursuant to the terms of a contract between Quinnipiac and Upward Builders. Mr. Errato never communicated or discussed the sale with his partner.

Walter Lewis, now elderly as the project is 30 years old and the case is 10 years old, had co-conservators appointed in Connecticut in August 2025 to manage his financial affairs and estate, including claims and litigation. Errato sought to enjoin Robin French and Carol Lewis from representing Walter's interests in this case. The trial court denied that motion on September 25, 2025, directing compliance with S.C. Code Ann. § 62-5-430 to register the Connecticut order in South Carolina. Errato appeals that ruling.

STANDARD OF REVIEW

The denial of a motion for injunction is reviewed for abuse of discretion. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” *Id.* Whether to grant a preliminary injunction is left to the sound discretion of the trial court and will not be overturned unless it is clearly erroneous. *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

Questions of statutory interpretation, including the scope of a conservator’s authority under the South Carolina Probate Code, are questions of law reviewed *de novo*.

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” Id. In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” Id. at 499, 640 S.E.2d at 459. Centex Int’l, Inc. v. S.C. Dep’t of Revenue, 406 S.C. 132, 750 S.E.2d 65, 69 (S.C. 2013).

ARGUMENT

THE TRIAL COURT PROPERLY DENIED ERRATO’S MOTION FOR INJUNCTION SEEKING TO BAR THE CO-CONSERVATORS FROM REPRESENTING WALTER LEWIS.

Errato’s motion sought to bar Robin French and Carol Lewis, respectively daughter and wife, the duly-appointed co-conservators of Walter Lewis’s estate, from representing Walter’s interests in this litigation. The trial court denied that motion and directed compliance with S.C. Code Ann. § 62-5-430 to register the Connecticut conservatorship order in South Carolina. That ruling was correct, followed, and should be affirmed. (Record on Appeal 3)

A. The Connecticut Conservatorship Order Expressly Covers This Litigation.

The August 14, 2025 Connecticut conservatorship order appointed Robin French and Carol Lewis as co-conservators of Walter Lewis’s estate for his financial affairs (Record on Appeal 1). Pursuant to that order, the co-conservators are authorized to manage real and personal property, banking and financial institutions, the operation of entities or businesses, and — critically — claims and litigation relating to Walter Lewis’s financial affairs.

S.C. Code Ann. § 62-5-430 governs the recognition and effect of foreign conservatorships in South Carolina. The trial court correctly recognized the Connecticut order and directed compliance with the registration requirements of that statute, which was accomplished. Errato does not contest the validity of the Connecticut order or the registration process; he contests only whether the co-conservators have authority to act in this specific case.

The plain language of the conservatorship order answers that question: it expressly authorizes management of claims and litigation concerning Walter Lewis’s financial affairs. This

case is precisely such a matter — it involves an alleged profit-sharing arrangement relating to a development project and claims for money and equitable relief arising from that arrangement. These are financial affairs of Walter Lewis’s estate within the scope of the conservatorship.

B. Murray v. Murray Does Not Bar Conservator Participation in This Case.

Errato relies primarily on *Murray by Murray v. Murray*, 310 S.C. 336, 426 S.E.2d 781 (1993), for the proposition that a conservator cannot maintain a “personal action” on behalf of a ward. Errato’s reliance on *Murray* is misplaced for several reasons.

First, *Murray* involved a divorce action — quintessentially a personal matter going to the personal status and domestic relations of the protected person, not to his financial interests. The South Carolina Supreme Court in *Murray* specifically noted that a conservator “can take action to protect estate assets,” and limited its holding to matters beyond the conservator’s statutory scope. *Murray*, 310 S.C. at 339, 426 S.E.2d at 783. A divorce action does not protect estate assets. A breach of contract action seeking to recover a share of profits from a development arrangement plainly does.

Second, the current version of the South Carolina Probate Code — which has been substantially revised since *Murray* was decided in 1993 — expressly authorizes a conservator to “pay or contest a claim” and to “settle a claim by or against the estate of the protected person by compromise, arbitration, or otherwise.” S.C. Code Ann. § 62-5-424(12) (2013). The statute also empowers a conservator to “undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate.” *Id.* § 62-5-424(8). This litigation — which seeks to recover profits allegedly earned by Walter Lewis through years of contribution to the Forest Springs project — is an action to protect and preserve estate assets within the meaning of the statute.

Third, S.C. Code Ann. § 62-5-433 specifically addresses procedures for settlement of claims in favor of or against incapacitated persons and confirms that a conservator may act on such claims. The statute’s structure confirms that the legislature contemplated conservators actively participating in litigation on behalf of their wards in financial matters.

Fourth, the out-of-state authorities cited by Errato for the proposition that breach of contract is a “personal action” do not address the specific question of conservator authority under

statutes comparable to South Carolina’s Probate Code. Those authorities largely address statutes of limitation and venue provisions — entirely different contexts. None holds that a properly authorized conservator may not prosecute a breach of contract claim on behalf of a ward in a financial matter.

Murray itself ultimately remanded for a determination of whether a guardian ad litem was appropriate, rather than categorically barring any representative from acting. Murray, 310 S.C. at 340, 426 S.E.2d at 783. The proper analogy here, if any, would be to appoint a guardian ad litem if the court found the co-conservators could not act — not to bar representation entirely and effectively deprive Walter Lewis of any voice in litigation concerning his financial interests.

C. No Disqualifying Conflict of Interest Has Been Established.

Even if this Court were to agree with Errato that the conservators’ authority was otherwise questionable — which Respondents/Appellants deny — Errato has not established a legally cognizable conflict of interest warranting disqualification of the co-conservators.

Errato’s conflict-of-interest argument rests on the assertion that Robin French has knowledge of the financial records of the project that may be adverse to Walter Lewis’s position. But this is not a conflict — it is a factual dispute. Errato’s real complaint is that Robin French may have information relevant to the agreement or profits made and what amounts remain outstanding. That information is the proper subject of discovery, not a ground for disqualifying her as a conservator.

A conflict of interest, as Errato himself acknowledges, is a “situation in which regard for one duty leads to disregard of another.” Black’s Law Dictionary (3d ed. 1991). No such conflict has been demonstrated here. Robin French’s duties as co-conservator are to manage Walter Lewis’s legal and financial affairs in his best interests. Her knowledge of the financial records does not conflict with that duty; it may, in fact, inform it. The possibility that Errato may wish to depose her, or that her testimony may be unfavorable to Walter Lewis’s claims, does not create a legal conflict of interest warranting her removal.

Moreover, Errato’s argument that disqualifying Robin necessarily disqualifies Carol Lewis — because the co-conservators must act jointly — has no support. Even accepting Errato’s joint-action argument, the appropriate remedy would be for the Probate Court in Connecticut to appoint

a replacement conservator, not for this Court to effectively strip Walter Lewis of any representation in litigation concerning his financial interests.

The trial court's denial of Errato's motion for injunction on this issue was correct. Errato did not demonstrate — and cannot demonstrate — the irreparable harm, likelihood of success, or absence of adequate remedy at law required for injunctive relief on this issue. The denial should be affirmed.

D. Equitable Considerations.

It cannot go unstated that the project is now 30 years old – during which time Mr. Errato has shelved the project between 2010 and 2016, claimed the project wasn't profitable and distributions couldn't be made, claimed the project ended after 10 years, has requested continuances for trial multiple times and now has filed a last minute appeal to disqualify the conservators for the old man he has put off for 30 years. Appealing Plaintiff's need for a conservator while simultaneously delaying adjudication of the matter for decades should not be rewarded.

CONCLUSION

For the foregoing reasons, Respondents/Appellants Richard Lewis and Walter Lewis respectfully request that this Court affirm the trial court's denial of Appellant/Respondent's Motion for Injunction seeking to bar co-conservators Robin French and Carol Lewis from representing the interests of Walter Lewis in this litigation.

Respectfully submitted,

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