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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, Jr., 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. 2026-001148

PETITIONER'S REPLY TO RESPONDENT'S RETURN

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ARGUMENTS IN REPLY

1.

Mr. Chay is an aggrieved party and NASSCO's theory would bar every debtor/grantor from appealing the voiding of a conveyance pursuant to the Statute of Elizabeth.

The Court of Appeals held that Mr. Chay was not aggrieved because, "[a]t the time NASSCO commenced the present litigation, [he] had relinquished his interest in the residence" and was divorced. *Chay* at 2. NASSCO does not seriously defend that reasoning. It offers instead a different rational: Mr. Chay's "position is unchanged" because in "either outcome" he "loses his interest in the property and is still indebted to one of the parties." (Return at 5.) NASSCO's theory is mistaken.

An aggrieved party is one whose interest is operated upon by the judgment; one suffering "a denial of some personal or property right or the imposition on a party of a burden or obligation." *Ralph v. McLaughlin*, 432 S.C. 640, 649, 856 S.E.2d 154, 158 (2021) (quoting *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970)). The Master's order does exactly that. It voided Mr. Chay's conveyance, reinstated his one-half interest in the property, and exposed that interest to attachment and execution by NASSCO. (R. 5–6.) The right to dispose of one's property is itself a property right, and an order destroying it is an injury. *See Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 295, 569 S.E.2d 371, 376 (Ct. App. 2002); *Rogers-Kent, Inc. v. Gen. Elec. Co.*, 231 S.C. 636, 644, 99 S.E.2d 665, 668 (1957). That is the textbook definition of an aggrieved party. Respectfully, the Court of Appeals ignored this fundamental aspect of property law, and its decision would prevent every debtor/grantor from appealing an order voiding their attempted conveyance under the Statute of Elizabeth.

NASSCO's "position unchanged" framing suffers from the same fatal flaw. On its logic, no debtor/grantor could ever appeal an order voiding his conveyance under the Statute of Elizabeth. Yet South Carolina courts have previously decided such appeals on the merits. *See First Citizens Bank & Tr. Co. v. Park at Durbin Creek*, 419 S.C. 333, 797 S.E.2d 409 (Ct. App. 2017); *Judy v. Judy*, 403 S.C. 203, 742 S.E.2d 672 (Ct. App. 2013). NASSCO's Return does not mention either decision, and it identifies no case holding that a debtor/grantor lacks standing to appeal the voiding of his own conveyance. As the petition demonstrated, no such case exists. (Pet. at 7–8.)

Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008), on which NASSCO relies, is inapposite. The bank there had no interest whatsoever in the funds at issue. (Return at 5–6.) Mr. Chay, by contrast, was a record owner of a one-half interest in the property and the order operates directly upon that interest.

Finally, NASSCO's observation that Mr. Chay did not appear at trial confuses participation below with the right to appeal. Mr. Chay is a named defendant and party of record against whom the order runs. It was Mr. Chay's right to convey property in the manner he chose that was denied by the Master's Order. Nothing in Rule 201(b), SCACR conditions an aggrieved party's right to appeal on his having testified.

2.

<u>The "law of the case" doctrine does not bar review of Mr. Chay's appeal.</u>

NASSCO contends that because Ms. Chay did not perfect her appeal, the Master's findings on her transferee burden are the law of the case and require affirmance. (Return at 6–8.) The law of the case doctrine does not reach Mr. Chay's appeal. The findings binding on Ms. Chay concern her burden, as the intra-family transferee, to establish the bona fides of the transaction. Mr. Chay's appeal raises a distinct question: whether, on de novo review, the conveyance he made was fraudulent under the Statute of Elizabeth at all. *See Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001) (on review of an equitable action the appellate court may "find facts in accordance with its own view of the preponderance of the evidence").

The decisions NASSCO cites concern a party who failed to challenge a ruling. *See Biales v. Young*, 315 S.C. 166, 432 S.E.2d 482 (1993); *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 177 S.E.2d 544 (1970). Mr. Chay did challenge the ruling by appealing it. A co-defendant's failure to appeal binds her; it does not extinguish a separately aggrieved party's appeal.

3.

<u>Mr. Chay's arguments are properly before the Court.</u>

NASSCO asserts that the arguments that the conveyance is better understood as one between adverse litigants in a divorce is factually incorrect and not preserved for review. (Return at 7–8). The fact that the disputed transfer in this case was made as part of a divorce is not a new issue. NASSCO claims that characterizing the transfer as between adverse litigants in a divorce is disingenuous because Ms. Chay had not filed for divorce at the time of the transfer. But this ignores the timeline of events.

Ms. Chay was repeatedly questioned by Counsel for both sides about what led to her divorce with Mr. Chay. It was approximately May 8, 2022 when 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). Immediately after this, Ms. Chay demanded that Mr. Chay transfer his half-interest in their marital home back to her to repay her. (R. 43, ll. 19 – 21). Ms. Chay recalled that it was "the least thing he could do." (R. 43, ll. 21 – 23). Just days later, 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). Additionally, the divorce decree showed a separation date of May 28, 2022, just days after Mr. Chay made the transfer. Thus, the discovery of infidelity, the demand for the transfer of the half-interest in the marital home, and the separation, all occurred within one month.

The actions of transferring ownership of the martial home and separation were clearly done in anticipation of the impending divorce which was initiated very quickly after Ms. Chay discovered the infidelity and the draining of the bank account. It can hardly be said that this was a transfer between a happily married couple. The record overwhelmingly supports the conclusion that the transfer was demanded by Ms. Chay in anticipation of a divorce which quickly followed.

4.

NASSCO's defense of the finding that the conveyance lacked consideration confirms that full briefing is warranted.

NASSCO argues that the deed and the accompanying Affidavit for Exempt Transfers, when read together, show that any forgiven debt "must be less than $100." (Return at 9–10.) The Master however found a lack of consideration because, in his view, Ms. Chay "presented no credible evidence of indebtedness" by Mr. Chay and no evidence that any debt "was forgiven as consideration for the transfer." (R. 5.) NASSCO's argument misreads the documents: the recording-fee affidavit is not a stipulation that no debt was forgiven, and the deed itself recites "One Dollar ($1.00) and/or other good and valuable consideration." (R. 97–103.)

At a minimum, whether this conveyance was supported by consideration is a substantial question. This Court has squarely held that grossly inadequate consideration is not the same as no consideration and does not eliminate the requirement to prove fraud. *Jeffords v. Berry*, 247 S.C. 347, 351–52, 147 S.E.2d 415, 418 (1966) ("gross inadequacy of consideration and 'without consideration' are not synonymous in the law"). Additionally, NASSCO does not meaningfully dispute the absence of fraudulent intent. The conveyance was made at Ms. Chay's insistence as she divorced Mr. Chay; he retained no benefit, does not live at the property, and has no access to it. (R. 43, 52–54.) The record here stands in contrast to *First Citizens Bank & Tr. Co. v. Scofield*, 286 S.C. 520, 335 S.E.2d 248 (Ct. App. 1985), where the debtor continued to occupy the property he had transferred.

5.

NASSCO did not prove that Mr. Chay failed to retain sufficient assets to satisfy the debt.

As the creditor, NASSCO was required to prove that Mr. Chay "failed to retain sufficient property to pay the indebtedness . . . 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). The only evidence on this element was Ms. Chay's testimony, which she candidly acknowledged was a guess. She testified that she did not know "practically anything about Mr. Chay's financial situation" and merely "guessed" it was "not good." (R. 56, l. 25 – 57, l. 22.). That is not proof. The Master erred in voiding Mr. Chay's conveyance of his half-interest in the marital home to Ms. Chay and the Court of Appeals erred in affirming that ruling. This Court should grant this petition and order full briefing on the questions presented.

CONCLUSION

Based upon the arguments made in Mr. Chay's petition for a writ of certiorari and this reply, 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.

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This 29th day of June, 2026.