

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

MAR 27 2014

The Honorable R. Markley Dennis

SC Court of Appeals

Case No.: 2013-CP-08-0149

St. Stephens Family Dentistry, LLCRespondent

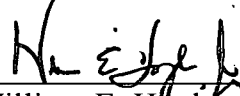
v.

Linda Gregg and Douglas Allen Kaufman.....Appellants

AMENDED NOTICE OF APPEAL

Linda Gregg and Douglas Allen Kaufman appeal the Order of the Honorable R. Markley Dennis dated December 4, 2013. Appellants received written notice of entry of this Order on or about December 12, 2013.

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March 27, 2014

ATTORNEY FOR APPELLANTS

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SC Court of Appeals

Other Counsel of Record:

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ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis

Case No.: 2013-CP-08-0149

St. Stephen Family Dentistry, LLC.....Respondent

v.

Linda Gregg and Douglas Allen Kaufman.....Appellants

PROOF OF SERVICE

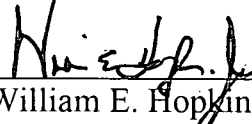
The undersigned certifies that a copy of the foregoing **Amended Notice of Appeal** has been served upon counsel of record by depositing a copy of the same, postage prepaid, with Federal Express, on this 27th day of March, 2014, to the address shown below.

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ATTORNEY FOR APPELLANTS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 ST. STEPHEN FAMILY)
 DENTISTRY, LLC)
)
 Plaintiff,)
)
 -versus-)
)
 LINDA GREGG AND DOUGLAS)
 ALLEN KAUFMAN)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 13-CP-08-149

ORDER

2013 DEC -4 PM 4:00
 MARY P. BRUNA
 CLERK OF COURT
 BERKELEY COUNTY, SC
 FILED
 MK

This matter came before this Court on Plaintiff's Motion for Damages on October 22, 2012. George J. Kefalos Esq. and Oana D. Johnson Esq. appeared on behalf of Plaintiff. Jay S. Masty, Esq. appeared on behalf of Defendants Linda Gregg and Allen Kaufman, for the limited purposes of this hearing.

PROCEDURAL HISTORY

This case began on January 22, 2013, when Plaintiff filed its complaint seeking monetary damages and requesting that this Court set aside the transfer of property from Defendant Linda Gregg to Defendant Douglas Allen Kaufman, fraudulently executed on June 13, 2012.

Defendants Gregg and Kaufmann were properly served on March 2, 2013, as indicated in the Affidavits of Service filed with this Court on April 12, 2013. Despite proper service, Defendants Gregg and Kauffman failed to Answer or otherwise Plead.

Upon application by Plaintiff, through its attorney, this Court entered and Order of Default on April 25, 2013.

Plaintiff filed a Motion for Damages Hearing on July 12, 2013. A hearing was set before this Court on October 22, 2013. Defendants, through their attorney, conceded that they ~~received proper notice of the hearing and waived any objections they may have to the notice~~

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requirement.

The Court's findings of fact and conclusions of law are set forth below.

FACTUAL BACKGROUND

Plaintiff, St. Stephen Family Dentistry, LLC, is a dental practice located in St. Stephen, South Carolina, owned by Tristan Cordray, DDS (hereinafter Dr. Cordray). Defendant Linda Gregg had been employed by Plaintiff from 2007 when St. Stephen's Family Dentistry was purchased by Dr. Tristan Cordray, until January 20, 2011. Defendant Gregg was the office manager for Plaintiff and stood in a position of trust and confidence to Plaintiff.

On January 20, 2011, Dr. Cordray opened a letter from Chase Cardmember Services addressed to Stephen Family Dentistry, enclosing a check from The SC State Employees Dental Benefit Plan made to St. Stephen Family Dentistry and endorsed to a Chase account (Plaintiff's Exhibit 1 at pages 9-10). The letter indicated that Chase does not accept third party checks. Dr. Cordray called Chase Cardmember Services and learned that the account used on the endorsement belonged to Defendant Gregg. When Dr. Cordray confronted Gregg with this information she stated: "Do you think I should leave?". Defendant Gregg then left and never returned to the practice and refused to accept any phone calls from Plaintiff.

Alarmed, Dr. Cordray retained the services of an attorney and subsequently, the services of Richard Livingston, CPA/CFF, CFE, CVA, a forensic accountant with the firm of Dixon Hughes Goodman LLP, to perform an investigation regarding possible misappropriation of funds by Linda Gregg. Using documents obtained by a search warrant issued in a criminal proceeding commenced against Ms. Gregg, Mr. Livingston's Forensic investigation revealed that Defendant Gregg developed a scheme whereby she intercepted checks payable to the St. Stephens Family Practice and endorsed them for deposit directly to pay her living expenses. In this way Defendant Gregg misappropriated funds for her benefit and that of Defendant Kaufman's benefit in an amount of at least \$139,363.20 (See Plaintiff's Exhibit 1 at page 4). The documents reviewed during the forensic investigation

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revealed that Defendants Gregg and Kaufman were using the credit cards in part to take lavish vacations to Pebble Beach, California, Disney World, and other locations, and to make payments on Defendant Gregg's personal vehicle, personal cell phone account, mortgage, and personal credit card accounts (See Plaintiff's Exhibit 1, pages 448, 467 and 620).

Mr. Livingston testified his investigation did not include any funds that patients (as contrasted to insurance companies) paid directly to Plaintiff. Dr. Cordray testified that judging from historical records, he estimated Linda Gregg misappropriated \$50,000 per year from patients, in addition to the \$139,363.20 taken from insurance companies during the three and a half years she operated her scheme. In addition to endorsing checks made to Plaintiff and using them for payment of her own debt, Defendant Gregg overbilled patients' insurer carriers for procedures that were not performed or procedures that were more expensive than the procedures actually performed. Unwittingly, Plaintiff received \$20,038.78 in payments as a result of Defendant Gregg's fraudulent scheme. Plaintiff was forced to reimburse insurers for all such overpayments deposited in its account and to notify patients that their insurers had been overbilled. Plaintiff does not seek reimbursement for these sums.

As a consequence of Defendants' wrongdoing Plaintiff had to perform free services and was forced to waive any payments due from patients in the amount of \$35,000. As a further consequence of Defendants' wrongdoing Plaintiff lost numerous patients. Dr. Cordray estimates the practice lost income in an amount of \$50,000 for the first six months following the discovery of the theft, and an estimated \$10,000 to \$15,000 per year after July 2011.

As part of the forensic investigation Mr. Livingston reviewed Linda Gregg's real and personal property records available at the Berkeley County Register of Deeds. The review revealed that in June 2012, after her scheme was discovered, Defendant Gregg conveyed her residence located at 3142 N. Highway 52, St. Stephen, SC to her fiancé, Defendant Douglas Allen Kaufman through a Quit Claim Deed for \$5.00 (Plaintiff's Exhibit 1 at page 4).

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Plaintiff also had to expend large amounts of money in order to determine the extent of Defendant Gregg's scheme. Plaintiff expended \$30,108.27 in accounting fees (See Plaintiff's Exhibit 3). Additionally, Dr. Cordray testified that Plaintiff had to purchase new computers that could be used for the investigation and hired a paralegal to begin the investigation. The cost for the new computers and paralegal were in the range of \$5,000 to \$10,000.

CONCLUSIONS OF LAW

The complaint contains the following causes of action as to Linda Gregg: (1) Conversion; (2) breach of fiduciary duty; (3) request to set aside fraudulent conveyance; (4) imposition of constructive trust and/or issuance of preliminary injunction. As to Defendant Kaufman the complaint contains the following causes of action: (1) request to set aside fraudulent conveyance; (2) breach imposition of constructive trust and/or issuance of preliminary injunction; and (3) aiding and abetting. The Court finds that Defendants have failed to answer or otherwise plead, therefore judgment in favor of Plaintiff is entered as follows: (1) conversion; (2) breach of fiduciary duty; and (3) fraudulent conveyance as to defendant Gregg and (1) fraudulent conveyance and (2) aiding and abetting breach of fiduciary duty as to Defendant Kaufman. The request for imposition of constructive trust and/or issuance of preliminary injunction is moot, in light of this Court's finding of fraudulent conveyance.

In light of the above findings and relying upon South Carolina well established law holding that "When two or more persons aid, abet and encourage each other in the commission of a crime, all being present, each is guilty as a principal" *Johnson v. Collins Entm't Co., Inc.*, 349 S.C. 613, 630, 564 S.E.2d 653, 662 (2002) this Court finds that Plaintiff is entitled to judgment against Defendants Gregg and Kaufmann, jointly and severally in an amount of \$569,371.47, as follows:

- (1) \$139,363.20 for embezzled funds;
- (2) \$37,508.27 for the cost of investigating;

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- (3) \$35,000 for the write-off of accounts receivable;
- (4) \$72,500 for loss of revenue due to loss of patients;
- (5) For a total of \$284,371.47 actual damages.

In addition to compensatory damages, Plaintiff has also requested the imposition of punitive damages against Defendants. "Punitive damages serve at least three important purposes: (1) punishment of the defendant's reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff's private rights." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 874-75 (Ct. App. 2004) S. C. Code § 15-33-135 of the South Carolina Code provides, "[i]n any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence. Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Austin* (citing *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996); *Lister v. NationsBank of Delaware*, 329 S.C. 133, 494 S.E.2d 449 (Ct.App.1997)). In light of the evidence presented, this Court finds that Plaintiff has established its entitlement to a punitive damages award by clear and convincing evidence and that such an award is justified as punishment for Defendants' reckless, willful, wanton, and malicious conduct; as a deterrence of similar future conduct by Defendants or others; and as additional compensation for the reckless or willful invasion of Plaintiff's rights by Defendants.

This Court must consider the following factors in determining the reasonable amount of punitive damages that should be awarded: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 396, 714 S.E.2d 904, 911 (Ct. App. 2011).

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The facts outlined above demonstrate that Gregg and Kaufman's misconduct is reprehensible. In order to determine the degree of reprehensibility, the Court must consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *Id.*

In this case, Defendants' misconduct resulted in significant monetary damages to Plaintiff, but no physical damage. Further, both Defendants demonstrated indifference and reckless disregard of Plaintiff's property rights. Plaintiff is a dental practice recently purchased by Dr. Cordray at the time of the overt acts. Plaintiff was clearly financially vulnerable as it was a virtually new business trying to get established in the area. The fourth and fifth prongs indicate a very high degree of reprehensibility since Defendant Gregg repeatedly used Plaintiffs' funds for both her benefit and Defendant Kaufman's benefit. The harm in this case was clearly the result of intentional deceit and not mere accident.

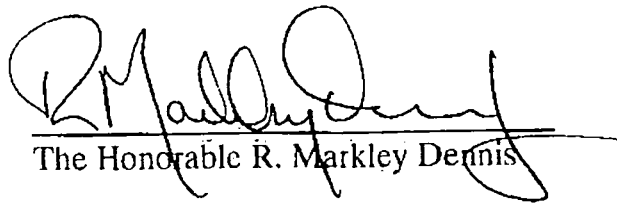
I find that a ratio of punitive damages to actual 1 to 1 is a reasonable ratio and would deter defendants from engaging in similar conduct in the future. Therefore this Court finds that Plaintiff is entitled to

(6) \$285,000 in punitive damages.


Further, this court finds that the conveyance of property from Defendant Gregg to Defendant Kaufman is fraudulent and the Quit Claim Deed dated June 13, 2012, recorded with the Berkeley County Register of Deeds in Book R 09524 Page: 54, and attached hereto as Exhibit 1 to this Order be and is hereby declared void. Berkeley County Register of Deeds is hereby ordered to void the Quit Claim Deed and log its index to reflect setting aside the transfer described above.

IT IS SO ORDERED,




The Honorable R. Markley Dennis

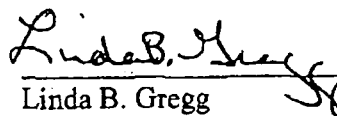
This ^{29th} ~~27~~ day of November, 2013
Charleston, South Carolina



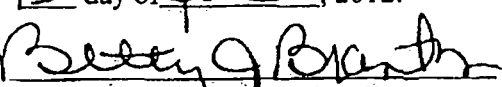
STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY) **AFFIDAVIT OF CONSIDERATION**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at First St. Stephen Parish, County of Berkeley, State of South Carolina bearing Berkeley County Tax Map No.: 047-00-01-141, was transferred by Clarence Gregg, Jr. to Linda B. Gregg on April 30, 2004 and recorded on May 12, 2004 in the ROD Office for Berkeley County in Book 3991 Page 341.
3. The deed is exempt from the deed recording fees due to EXEMPTION # 4. Explanation: This transfer of title action is to convey my interest in said property to my finance, Douglas Allen Kaufman.
4. As required by Code Section '12-24-70', I state that I am a responsible person who was connected with the transaction as: self.
5. I understand that a person required to furnish this Affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor, and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



 Linda B. Gregg

SWORN to before me this
13 day of June, 2012.

 Notary Public for South Carolina
 My Commission Expires: 4-17-13

HOPKINS LAW FIRM, LLC

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March 27, 2013

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 292101

RE: St. Stephen Family Dentistry, L.L.C. v. Linda Gregg and Douglas Allen
Kaufman
Appellate Case No.: 2013-002798

Dear Ms. Kitchings:

Enclosed for filing is an Amended Notice of Appeal in the above-referenced case.
Also enclosed are the following:

- (1) Proof of Service of the Amended Notice of Appeal on counsel for Respondents;
- (2) A copy of the Order and Judgment which is to be challenged on appeal;
- (3) Notice of Appearance; and
- (4) Proof of Service of the Notice of Appearance on counsel for Respondents.

Sincerely,



William E. Hopkins, Jr.

WEH/rds

cc: George J. Kefalos, Esquire
Jack Cordray, Esquire
Linda Gregg
Douglas A. Kaufman

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MAR 27 2014

SC Court of Appeals