

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Mary Anne Goldsmith Beeson,)
Plaintiff,)

vs.)

Joseph A.C. Beeson, Saluda River Holdings,)
LLC, Barney G. Gosnell, J and E Holdings,)
LLC, James M. Stephens, Don Jones, Tony)
Raffo, and E. Scott Sanders,)
Defendants.)

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ORDER GRANTING SUMMARY JUDGMENT MAY 18 2015

C/A No.: 2014-CP-04-004

SC Court of Appeals

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THIS MATTER came before the Court on February 9, 2015, pursuant to the Defendants' respective motions to dismiss or, in the alternative, motions for summary judgment. Plaintiff is represented by Milford O. Howard, III, of the Howard Law Firm. Defendants Joseph A.C. Beeson and J and E Holdings, LLC, are represented by David J. Brousseau of the law firm McIntosh, Sherard, Sullivan & Brousseau. Defendant E. Scott Sanders is represented by J. Kirkman Moorhead of the law firm Krause, Moorhead & Draisen. Defendants Saluda River Holdings, LLC, Barney G. Gosnell, James M. Stephens, and Tony Raffo are represented by James W. Logan, Jr., of the law firm Logan, Jolly & Smith.¹

Plaintiff filed her Summons and Complaint seeking, inter alia, damages from the Defendants for causes of action for 1) Civil Conspiracy, 2) Fraud and 3) Conversion. All Defendants timely filed responsive pleadings to which the Plaintiff filed her replies.

On September 5, 2014, the Honorable R. Keith Kelly, Circuit Court Judge, signed an Order Granting Defendant John W. Beeson's Motion to Dismiss. In late October of 2014, the remaining Defendants all filed their respective motions to dismiss or, in the alternative, for summary judgment. Reference is invited to the court file for further particulars thereof.

¹ The Defendant, Don Jones, appears never to have been served with the Summons and Complaint in this matter and therefore the Court has no jurisdiction over him. It further is the Court's understanding that Mr. Jones died prior to the filing of this action. His Estate likewise was never made a party.

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A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Id.*

As background to this case, the Plaintiff is the former spouse of Defendant Joseph A.C. Beeson. They were divorced by way of Amended Final Decree of Divorce issued by the Honorable Edgar H. Long, Family Court Judge, on July 5, 2013, in C/A No. 2008-DR-04-2622. All parties acknowledge that the divorce action was highly contentious and resulted in a weeklong trial. The Amended Decree is 27 pages in length, and is quite detailed in its findings and conclusions. Among other things, the Amended Final Decree stated: "Wife argued that Husband planned the foreclosure and sale to cheat her out of her interest in this property. The evidence does not prove that and the property had no equity even if that was Husband's plan." The Amended Final Decree was not appealed and is thus the law of the case.

During the course of the aforementioned divorce action, a foreclosure action was filed regarding the former marital residence of Plaintiff and Defendant Joseph Beeson. The Honorable Ellis B. Drew, Jr., Master-In-Equity, issued a Decree of Foreclosure on September 29, 2010, in C/A No. 2010-CP-04-1599. No appeal was taken from the Decree of Foreclosure and it is therefore the law of the case.

The causes of action alleged in Plaintiff's Complaint herein are based on the alleged actions and/or inactions of the various Defendants in regards to the events surrounding the foreclosure of the former marital residence. In relevant part, a summary of Plaintiff's allegations for which she based her Complaint is that the Defendants acted in concert to "cheat her out of her share of the equity in the former marital residence."

As set forth in the Divorce Decree, on December 22, 2009 (over 9 months prior to the Decree of Foreclosure), the Family Court appointed a Sequestrator "to take control of all the marital income and assets and to manage the marital estate. . . . He had a plan to set aside money from the sale of the Spinx and WBN, LLC properties to fund the interest payments. Wife refused to sign the forbearance agreement, and the foreclosure proceeded, ultimately resulting in

judgment against Husband and Wife. . . . When the assets and rental income were turned over to the Sequestrator he paid other marital debts which totaled several million dollars, rather than pay more on the marital residence, an asset that had no equity.”

S.C. Code Ann. § 63-3-530(A)(2) (2010) provides, in relevant part, that the family court has exclusive jurisdiction “for settlement of all legal and equitable rights of the parties in the action in or to the real and personal property of the marriage.” Further, other than final orders on proper appeal, the family court has exclusive jurisdiction to modify and/or vacate its own order. S.C. Code Ann. § 63-3-530(A)(25) (2010). The family court’s order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following a proper appeal. S.C. Code Ann. § 20-3-620(C) (Supp. 2010).

The Plaintiff’s Complaint is replete with references to the “marital home” and the “marital estate.” There is no question but that the gravamen of the Plaintiff’s grievance is the valuation and disposition of the “marital home” and “marital estate” which were carried out under the close supervision and control of the court appointed Sequestrator. These determinations are within the sole and exclusive jurisdiction of the Family Court pursuant to the South Carolina Code of Laws. Any alteration of the Family Court’s findings would disrupt the bedrock upon which the Family Court based its decision regarding equitable division of marital property, alimony and attorney’s fees and costs. The Court of Common Pleas does not have the authority to disrupt or alter such findings of the Family Court.

In fact, this Court, by and through its September 9, 2014 Order granting Defendant John W. Beeson’s Motion to Dismiss, has previously found that it did not have subject matter jurisdiction in this matter. Specifically, the Order provides:

Pursuant to S.C. Code Ann. §20-3-620(C), “[t]he family court’s order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal.” S.C. Code Ann. §20-3-620(C) (2014). In this case, the Plaintiff did not appeal the Amended Divorce Decree. As such, it is not subject to modification. Plaintiff’s Complaint seeks to disrupt, alter or change the findings that were fundamental to the Family’s Court’s decision regarding equitable distribution of marital property, alimony and attorney’s fees. This Court lacks the authority and subject matter jurisdiction to alter findings that were within the exclusive jurisdiction of the Family Court.”

The September 9, 2014 Order of this Court was not appealed and is thus the law of the case.

The same issues raised by the Plaintiff herein were addressed by the Family Court during

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her trial in the divorce action and are therefore barred by *res judicata* or collateral estoppel. "*Res judicata* bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding." *South Carolina Public Interest Foundation v. Greenville County*, 401 S.C. 377, 737 S.E.2d 502 (Ct.App.2013) (citing *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App.1997)). "Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined ... the determination is conclusive in a subsequent action on that claim or a different claim." *Laughon v. O'Braitis*, 360 S.C. 520, 602 S.E.2d 108 (Ct.App.2006) (citing *Carman v. S.C. Alcoholic and Beverage Control Comm'n*, 317 S.C. 1, 451 S.E.2d 383 (1994)). The substantive allegations raised in the Plaintiff's Complaint, in this case, were heard, argued, considered and ruled upon in the Family Court. Plaintiff is therefore precluded from relitigating these issues.

Even if this Court had subject matter jurisdiction and even if the issues were not precluded by *res judicata* or collateral estoppel, the Plaintiff has failed to meet her burden of proof on each of the causes of action. First, she has failed to prove damages as a proximate result of any actions and/or inactions of the Defendants, which is a required element for both fraud and civil conspiracy. *See Armstrong v. Collins*, 66 S.C. 204, 621 S.E.2d 368 (Ct.App.2005) ("the hearer's consequent and proximate injury" is a required element of fraud); *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct.App.2009) (special damages are a required element of civil conspiracy). As noted above, the Family Court has ruled as a matter of fact that there was no equity in the marital home and further valued additional assets in the marital estate. The Amended Decree further states, "After the sale at auction, the mortgage holder still held a deficiency judgment against both parties in the amount of \$335,000. Husband negotiated a reduction in this deficiency judgment down to \$225,000. Saluda River Holdings, LLC, then paid the reduced amount in full satisfaction of the judgment, which resulted in a direct benefit to Husband and Wife." Therefore, the Plaintiff's claim for damages fails *ab initio* as there has been a dispositive ruling regarding the valuation of the former marital home and marital assets.

In addition, Plaintiff has failed to prove that the Defendants made material false representations to any person, which is required for a fraud cause of action. *See Ardis v. Scott*, 314 S.C. 512, 431 S.E.2d 267 (Ct.App.1993). Her allegation is that Defendant Joseph Beeson allowed the home to go into foreclosure. She further alleges that Saluda River Holdings, LLC, of

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which Joseph Beeson is a member, then purchased the former marital home at foreclosure sale. Lastly, she alleges that this was a scheme planned by Joseph Beeson to "cheat her out of her equity in the home." Nowhere within the pleadings, affidavits or documents presented is there any evidence to show where any of the Defendants made a material false representation to any person that was relied upon by the Plaintiff.

Plaintiff failed to offer any additional evidence in support of her case by affidavit or otherwise. The record is replete with evidence that the Plaintiff refused to enter into a forbearance agreement with the bank foreclosing upon the marital residence and that this refusal actually hastened the foreclosure. There is no evidence that the foreclosure occurred for any reason related to a conspiracy to deprive the Plaintiff of her interest. To the contrary, viewing the evidence in the light most favorable to the Plaintiff, she appears to have contributed to the expedited loss of the property.

Finally, the Plaintiff's cause of action for conversion of real property will not lie in South Carolina. "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993) (Emphasis Added). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Cl.App.2003) (Emphasis Added). It is well settled that a conversion action does not lie when alleging the exercise of dominion or control over real property. See 18 Am. Jur. 2d *Conversion* § 7 (1998) (commenting that "an action for conversion ordinarily lies only for personal property which is tangible, or at least represented by or connected with something tangible" and "will not lie for such indefinite, intangible, and incorporeal species of property as a ... leasehold estate or interest"). *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557, 566 (Cl. App.2004).

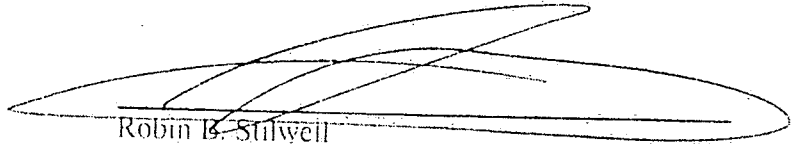
Plaintiff alleges that the Defendants wrongfully converted the use of the former marital home to their own possession. First, the home was foreclosed upon and purchased by Saluda River Holdings, LLC, at an auction open to the public. It did not wrongfully convert the property to its own possession as it purchased the same through open auction advertised through the foreclosure process. It should be further noted that Plaintiff did not appeal the foreclosure order, and the Amended Divorce Decree finds as fact that she did not cooperate in efforts to

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stave off the foreclosure. Second, under the law of the State of South Carolina, a cause of action for conversion will not lie in a suit regarding real property.

For all the foregoing reasons, taking the evidence in a light most favorable to the Plaintiff, there is no genuine issue of material fact that would support the Plaintiff's causes of action. Accordingly, the Defendants are entitled to summary judgment as a matter of law as to all causes of action plead within Plaintiff's Complaint.

IT IS SO ORDERED this 12 day of MARCH, 2015.



Robin B. Stilwell
Presiding Circuit Court Judge

Greenville, South Carolina.

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GENERAL SESSIONS

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

TENTH JUDICIAL CIRCUIT

Mary Anne Goldsmith Beeson,)

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER,
ALTER OR AMEND**

Plaintiff,)

v.)

Joseph A. C. Beeson, Saluda River)
Holdings, LLC, Barney G. Gosnell, J and E)
Holdings, LLC, James M. Stephens, Don)
Jones, Tony Raffo, and E. Scott Sanders,)

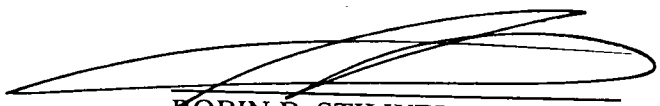
Defendants.)

Case No.: 2014-CP-04-00474

This matter comes before the Court pursuant to the Plaintiff's Motion to Reconsider, Alter or Amend. The Court has reviewed the same together with all attachments and memoranda of law. Additionally, the Court has reviewed the original submissions and relevant materials from the underlying hearing. Based upon this thorough review, this Court elects to decide this matter in chambers without the necessity of a hearing.

After having reviewed the record and the Plaintiff's Motion, the Court respectfully denies the same. There has been no additional information or arguments submitted that would warrant an alteration or amendment to the Court's original Order.

AND IT IS SO ORDERED.



ROBIN B. STILWELL
COMMON PLEAS AND
GENERAL SESSIONS

May 1, 2015
Greenville, South Carolina

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