

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOURTEENTH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT ) CIVIL ACTION NO: 2012-CP-07-01366

KIMBERLEE TAVINO, Individually )  
and as Personal Representative of the )  
Estate of Betty Jane Jackson, and )  
CATHERINE SPRINGFIELD, )

Plaintiffs, )

vs. )

CHRISTINE SCHERIFF and FRANK )  
SCHERIFF, )

Defendants. )

ORDER GRANTING DEFENDANTS' )  
MOTION FOR PARTIAL SUMMARY )  
JUDGMENT AND REMANDING TO )  
THE BEAUFORT COUNTY PROBATE )  
COURT )

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SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT for a hearing, following proper notice, on November 6, 2012, on Defendants' Motion for Partial Summary Judgment and for an Order remanding the above-captioned action to the Beaufort County Probate Court. Present at the hearing were Robert M.P. Masella, Esquire, attorney for Plaintiffs, and Roberts Vaux, Esquire, and Antonia T. Lucia, Esquire, attorneys for Defendants. John S. Nichols, Esquire, subsequently entered an appearance as co-counsel for the Plaintiffs.

After due consideration of the testimony and other admissible evidence presented at the hearing, the arguments and memoranda of counsel, the record, and the applicable law, the Court now grants Defendants' Motion for Partial Summary Judgment and the case is remanded to the Beaufort County Probate Court.

#### FACTUAL/PROCEDURAL BACKGROUND

The decedent, Betty Jane Jackson, died testate on May 4, 2008. Her Last Will and Testament, dated September 23, 1994, poured over her probate estate to the decedent's Revocable Living Trust Agreement which named her three surviving children, Kimberlee Tavino, Christine Scheriff, and Catherine Springfield, as beneficiaries.

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In May of 2005, Betty Jane Jackson sold her home at 11 Governor's Lane, Hilton Head Island, South Carolina. The \$739,792.13 check for the proceeds of that sale was given to decedent's daughter, Christine Scheriff.

In June of 2005, Christine Scheriff and Frank Scheriff purchased a home at 2 Rosebud, Bluffton, South Carolina, for the amount of \$740,000.00, using the proceeds of the sale of the decedent's Governors Lane home. This property was titled in the name of Christine Sheriff and Frank Sheriff, as joint tenants with right of survivorship. This home was occupied by the decedent together with Christine Scheriff and Frank Scheriff until decedent's death in 2008.

In January of 2009, Kimberlee Tavino petitioned the Probate Court for the County of Beaufort to admit the Last Will and Testament of Betty Jane Jackson for probate and to appoint Kimberlee Tavino as Personal Representative of that estate.

In March of 2010, Kimberlee Tavino, individually and as the Personal Representative of the Estate of Betty Jane Jackson, together with Catherine Springfield, commenced an action against Christine Scheriff and Frank Scheriff. The complaint set forth a cause of action to set aside the deed for the property located at 2 Rosebud, Bluffton, South Carolina, as well as claims for breach of fiduciary duty, conversion, equitable lien, resulting trust, and constructive trust.

In December of 2010, the parties took part in mediation. In March of 2011, the Plaintiffs moved to compel an alleged settlement. By Order of the Beaufort County Probate Court dated September 8, 2011, and affirmed upon the Court's reconsideration by Order dated September 26, 2011, the Honorable Kenneth E. Fulp, Jr., denied the Plaintiffs' motion and refused to approve the alleged mediation agreement.

Subsequently, the Plaintiffs, with leave of Court, interposed an Amended Complaint which retained the original causes of action and added the following:<sup>1</sup>

- Seventh cause of action for fraud
- Eighth cause of action for constructive fraud
- Ninth cause of action for intentional infliction of emotional distress/outrage
- Tenth cause of action for civil conspiracy

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<sup>1</sup>The Amended Complaint also included a thirteenth cause of action which is merely a demand for attorney's fees and costs.

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- Eleventh cause of action for intentional interference with inheritance
- Twelfth cause of action for breach of contract
- Fourteenth cause of action for breach of contract accompanied by fraudulent act

Based on the Amended Complaint, Plaintiffs sought to remove this matter to Circuit Court, asserting that the breach of contract and intentional infliction of emotional distress causes of action entitled them to trial by jury and that the amount in controversy is at least \$5,000.00.

By Order of the Honorable Kenneth E. Fulp, Jr., entered on April 4, 2012, the Beaufort County Probate Court granted removal. On May 14, 2012, the Defendants moved for partial summary judgment, and for an Order remanding this case to Beaufort County Probate Court. Defendants' motion is now granted.

#### ANALYSIS/DISCUSSION

##### **Seventh Cause of Action for Fraud and Eighth Cause of Action for Constructive Fraud:**

In her deposition taken on January 13, 2010, Kimberlee Tavino answered, under oath, that there were no conversations with the Defendants regarding title to the property at issue. Despite this sworn testimony, in paragraph 8 of her subsequent Amended Complaint, Tavino alleges having a conversation with the Defendants in which she was told it was "just easier" to title the property in Defendants' names. Paragraph 8 of the Amended Complaint is the basis for the fraud and constructive fraud causes of action and further alleges that "Cathy [the third beneficiary] had no knowledge of this [titing of the property]."

The parties in this matter were provided multiple opportunities to supplement their submissions in this matter, and they did so. The Court received supplemental materials from the Plaintiffs on November 26, 2012, December 9, 2013, and April 14, 2014 (upon retaining additional counsel), and from Defendants on November 20, 2012, November 27, 2012, December 16, 2013, and May 8, 2014. Despite the diligent work of their attorneys, Plaintiffs have been unable make the necessary showing that a genuine issue of material fact exists for trial with respect to their fraud and constructive fraud

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causes of action. *See e.g., Walton v. Mazda of Rock Hill*, 376 S.C. 301, 308, 657 S.E.2d 67, 70 (Ct. App. 2008)(party opposing summary judgment must do more than rely on mere allegations); *Smith v. Hastie*, 367 S.C. 410, 416 n.5, 626 S.E.2d 13, 16 n.5 (Ct. App. 2005)(fraud claim requires proof by clear and convincing evidence).

**Ninth Cause of Action for Intentional Infliction of Emotional Distress:**

The same must be said for Plaintiffs' claim for Intentional Infliction of Emotional Distress, traditionally called "outrage." The Plaintiffs allege in Paragraph 54 of the Amended Complaint that:

"Plaintiffs are informed and believe that Defendants have acted intentionally or at the minimum extremely reckless [sic] with an attempt to steal their rightful inheritance which was left to them by their mother who intended to leave her worldly assets equally to each of her three daughters as evidenced by mother's will"

This is the same tortious conduct which forms the basis of the causes of action for breach of fiduciary duty, conversion, setting aside the deed, equitable lien, resulting trust, and constructive trust.

Again, despite multiple opportunities to do so, Plaintiffs have failed set forth any evidence suggesting that Defendants' conduct was "so extreme and outrageous as to exceed all bounds of decency." *See Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010)(internal citations omitted). Nor have they presented evidence that they have suffered emotional distress as a result of Defendants' actions in handling the decedent's "worldly assets".

**Tenth Cause of Action for Civil Conspiracy:**

Judge Michael Duffy reiterated in *Harris v. Sand Canyon Corp.*, 274 F.R.D. 556 D.S.C. 2010) that:

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The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.1989). The difference between civil and criminal conspiracy is in criminal conspiracy, the gravamen of the offense is the agreement itself, whereas in civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design. *Id.*; see also *Pye v. Estate of Fox*, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006) ("The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.").

A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984) *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

*Harris* at 563 -564.

Moreover, in order to properly plead a cause of action for civil conspiracy, the Plaintiffs must allege special damages, beyond those set forth in the other causes of action. See *LaMotte v. Punch Line of Columbia, Inc.* 296 S.C. 66, 370 S.E.2d 711 (1988)' *Vaught, supra.*

In Paragraph 62 of the Amended Complaint, Plaintiffs allege that they have sustained attorney's fees and expenses of litigation, interest and income lost by not having access to their inheritance, and rental income owed to the Plaintiffs by the Defendants, who have lived in the Rosebud property. All of these damages are either actual or consequential damages which have been demanded in the breach of fiduciary duty and conversion causes of action (and the attorney fees sustained in prosecuting this matter would not be recoverable). The causes of action for setting aside the deed, resulting trust, and constructive trust also request not only a return of the misappropriated property but compensation for any benefit therefrom. Thus, for this reason, and because Plaintiffs have not made the necessary showing that a genuine issue of material fact exists with respect to their conspiracy claim, Defendants are entitled to summary judgment. See *Maples v. Myers*, 2004 WL6331521, 2004-UP-364 (S.C. Ct. App. June 10,

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2004)(conspiracy claim must fail where summary judgment opposition is based on mere suggestion and speculation).

**Eleventh Cause of Action for Intentional Interference with Inheritance:**

South Carolina courts have not yet recognized intentional interference with inheritance rights as a valid cause of action. See *Meehan v. Meehan*, 2006 WL 7285712 at \*3 n.3, 2006-UP-088 (S.C. Ct. App. Feb. 10, 2006). In *Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 10 n.4, 542 S.E.2d 715, 717 n.4 (S.C. 2001), the South Carolina Supreme Court explained that:

Most jurisdictions adopting the tort of intentional interference with inheritance have required the plaintiff to prove the following elements: (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. See, e.g., *Nemeth v. Banhalmi*, 99 Ill.App.3d 493, 55 Ill.Dec. 14, 425 N.E.2d 1187 (1981); *Morrill v. Morrill*, 712 A.2d 1039 (Me.1998); *Doughty v. Morris*, 117 N.M. 284, 871 P.2d 380 (Ct.App.1994); *Firestone v. Galbreath*, 67 Ohio St.3d 87, 616 N.E.2d 202 (1993); *Wickert v. Burggraf*, 214 Wis.2d 426, 570 N.W.2d 889 (1997); see also Restatement (Second) of Torts § 774B (1979).

As set forth above, Plaintiffs have failed to set forth any evidence in support of their allegations that Defendants have intentionally and improperly interfered with their inheritance rights. Thus, even if South Carolina were to recognize this cause of action, Plaintiffs have failed to make the showing necessary to survive Defendants' properly supported motion for partial summary judgment.

**Twelfth Cause of Action for Breach of Contract and Fourteenth Cause of Action for Breach of Contract Accompanied by Fraudulent Act:**

In June of 2011, Plaintiffs moved for approval of the alleged mediation agreement which is the subject of the Twelfth and Fourteenth Causes of Action. The Plaintiffs' Notice of Motion stated: "This motion is pursuant to South Carolina sections 62-3-1101 and 1102, as well as Rule 6(a) of Supreme Court Administrative Order 2007-08-23-01 re: Probate Court Pilot Mediation Program."

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South Carolina Probate Court Sections 62-3-1101 and 62-3-1102<sup>2</sup> provide (with emphasis) as follows:

**62-3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.**

A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved by the court after hearing, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62-5-433.

**62-3-1102. Procedure for securing court approval of compromise.**

The procedure for securing court approval of a compromise is as follows:

- (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parties acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identify cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
- (2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.
- (3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that

<sup>2</sup> Any inconsistencies between the provisions of South Carolina Probate Code Sections 62-3-1101 and 1102 and SCRPC Rule 41.1 are resolved by SCRPC Rule 81 which provides:

These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable in magistrate's courts, probate courts, and family courts to the extent they are not inconsistent with the statutes and rules governing those courts. In any case where no provision is made by statute or these Rules, the procedure shall be according to the practice as it has heretofore existed in the courts of this State. (emphasis supplied.)

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**the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement.** Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. **Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.**

The requirement of court approval is furthermore confirmed in Supreme Court Administrative Order 2007-08-23-01 re: Probate Court Pilot Mediation Program which provides that:

**Rule 6(a). Agreement in Probate Court.** Upon reaching an agreement, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. It is the obligation of the parties to seek approval of the agreement by the Probate Court.

The Plaintiffs' application for Probate Court approval of the mediation agreement was denied by Order of the Beaufort County Probate Court dated September 8, 2011, and on reconsideration by Order dated September 26, 2011. In reaching its decision, the Court was faced with evidentiary constraints since the alleged agreement was the result of mediation. The Court reasoned:

The exclusion of evidence of compromise negotiations is imperative and proper. Rule 408 compels it; moreover, the admission of such evidence would undesirably "chill" settlement negotiations, mediation, and other alternative dispute resolution.

Nevertheless, that exclusion, together with the other evidentiary constraints noted above, make it inappropriate for this Court to grant the relief requested by Plaintiffs in their Motion, either as a motion to compel the settlement or to approve it under § 62-3-1102. To do so would, in effect, amount to a judgment for money and enforcement of a contract – in final resolution of the underlying action and substitution for the relief requested in Plaintiffs' Complaint – without consideration of evidence that might be relevant and should be considered before awarding such relief.

In addition, it should be noted that approval of the subject agreement under §§ 62-3-1101 and 62-3-1102 appears inappropriate in this case, where one side of the purported compromise registered their "disagreement" by Motion filed a month before Plaintiffs' Motion to

Compel (the Motion for Approval under §§ 62-3-1101 and 62-3-1102 being filed three months later). Sections 62-3-1101 and 62-3-1102 set forth a process for Court *approval* of a compromise to which all relevant parties have agreed, not a process to *compel* agreement – except to the extent that the Court may direct “all fiduciaries subject to its jurisdiction to execute the agreement.” S.C. Code § 62-3-1102(3).

The Probate Court declined to approve the mediation agreement so as to convert it to a binding contract, and no action for breach of contract or breach of contract accompanied by fraudulent act may be maintained in the absence of a contract, supported by the meeting of the minds.

Moreover, in order to recover for breach of contract accompanied by fraudulent act, the Plaintiffs must establish not only that the breach was accomplished with a fraudulent intention, but more importantly, that the breach was accompanied by a fraudulent act. *See Minter vs. GOCT, Inc.*, 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996). The Plaintiffs have not pled any fraudulent action on the part of the Defendants separate and apart from the alleged breach of contract. Accordingly, the Fourteenth Cause of Action cannot be sustained.

**Remand to Probate Court:**

Plaintiffs, in seeking removal, predicated their motion on the causes of action for breach of contract and intentional infliction of emotional distress. Plaintiffs argued that these causes of action entitled them to trial by jury and involved an amount in controversy of at least \$5000.00, thereby mandating removal pursuant to South Carolina Probate Code 62-1-302(d)(5).

Upon the granting of partial summary judgment, the original causes of action for breach of fiduciary duty, conversion, setting aside the deed, equitable lien, resulting trust, and constructive trust<sup>3</sup> (as well as the thirteenth cause of action which is merely a demand for attorney’s fees and costs) now remain. As these causes of action sound in equity, the underlying basis for removing this matter to Circuit Court, §62-1-302(d)(5), is no longer applicable. Thus, this matter is properly remanded to the Beaufort County Probate Court, which retains continuing, exclusive jurisdiction pursuant to §62-1-302(e).

<sup>3</sup> Judge Fulp, by Order dated June 8, 2010, denied a motion to remove to Circuit Court based on the original causes of action.

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**CONCLUSION**

For the foregoing reasons, Defendants' Motion for Partial Summary Judgment and Remand is granted. The Court grants summary judgment as to Plaintiffs' causes of action for fraud, constructive fraud, intentional infliction of emotional distress/outrage, civil conspiracy, intentional interference with inheritance, breach of contract, and breach of contract accompanied by fraudulent act and now remands this matter to the Beaufort County Probate Court to adjudicate the remaining causes of action.

**AND IT IS SO ORDERED.**

  
Stephanie P. McDonald  
Presiding Circuit Court Judge

October 13, 2014

Charleston South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF BEAUFORT  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-07-01366

KIMBERLEE TAVINO, Individually and as  
 Personal Representative of the Estate of Betty Jane  
 Jackson, and CATHERINE SPRINGFIELD,  
 PLAINTIFF(S)

CHRISTINE SCHERIFF and FRANK  
 SCHERIFF,  
 DEFENDANT(S)

Submitted by: Antonia T. Lucia, Esquire  
 Vaux Marscher Berglind, P.A.  
 16 William Pope Drive, Suite 202, Bluffton, SC 29909

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : This action has been remanded to Probate Court

*The motion to reconsider is denied.*

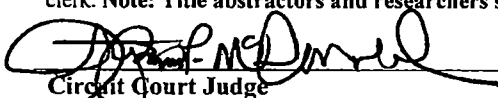
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Christine Scheriff and Frank Scheriff	Kimberlee Tavino, individually and as Personal Representative of the Estate of Betty Jane Jackson, and Catherine Springfield	\$ N/A
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
 Circuit Court Judge

2163  
 Judge Code

4/30/15  
 Date



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO: 2012-CP-07-01366

KIMBERLEE TAVINO, Individually )  
and as Personal Representative of the )  
Estate of Betty Jane Jackson, and )  
CATHERINE SPRINGFIELD, )  
 )  
Plaintiffs, )

vs. )

ORDER DENYING PLAINTIFFS'  
MOTION FOR RECONSIDERATION

CHRISTINE SCHERIFF and FRANK )  
SCHERIFF, )  
 )  
Defendants. )  
\_\_\_\_\_ )

THIS MATTER CAME BEFORE THE COURT on Plaintiffs' Motion, pursuant to S.C.R.C.P. Rules 52 and 59, requesting Reconsideration of the Court's Order entered on October 21, 2014. That Order granted Defendants' Motion for Partial Summary Judgment and remanded this action to the Beaufort County Probate Court. In opposition, Defendants' counsel submitted a Return dated December 18, 2014.

After due deliberation of the Motion, the opposition, the record, and the applicable law, the Court finds that the Plaintiffs have not set forth any issues or arguments warranting reconsideration. The Court therefore denies the Plaintiffs' Motion for Reconsideration and confirms its Order entered on October 21, 2014.

The Defendants' Motion for Partial Summary Judgment focused on seven causes of action, each of which was previously analyzed by the Court. That analysis is incorporated herein and reaffirmed as follows.

**ANALYSIS/DISCUSSION**

**Seventh Cause of Action for Fraud and Eighth Cause of Action for Constructive Fraud:**

The causes of action for fraud and constructive fraud are predicated on Paragraph "8" of the Amended Complaint which alleges:

After the closing of the sale of the Governors Lane home, Christine secretly converted the proceeds to her own use and placed these funds into her own escrow account. Those funds were used by Defendants to purchase a new home which Christine and Frank had titled in their names, telling Kimberlee it was easier to do it that way but not disclosing to her that they would later claim they owned the property. Cathy had no knowledge of this.

Contrary to this allegation, Kimberly Tavino, in her deposition testimony taken on January 13, 2010 stated, under oath, that there were no conversations with the Defendants regarding title to the property at issue.

Despite the Court's consideration of subsequent submissions by all parties, Plaintiffs have failed to offer any explanation for the inconsistencies or to demonstrate that there is even a scintilla of evidence to support these causes of action as mandated by *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 623 S.E.2d 801 (2009).

**Ninth Cause of Action for Intentional Infliction of Emotional Distress:**

In *Ford v. Hutson*, 276 S.C.157, 276 S.E.2d 776 (1981), the Supreme Court held that in order to recover for intentional infliction of emotional distress, a plaintiff must establish that the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency", and must be regarded as "atrocious, and utterly intolerable in a civilized community" such that "no reasonable man could be expected to endure it". *Id.* 276 S.C. at 162, 276 S.E.2d at 778.

Subsequent to this case, the Court of Appeals noted "the widespread reluctance of courts to permit the tort of outrage to become a panacea for wounded feelings rather than reprehensible conduct". *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct.App. 1984) *rev'd on other grounds*, 287 S.C.190, 336 S.E.2d 472 (1985).

The Plaintiffs in the case at bar did nothing more than assert the same tortious conduct which forms the basis for the causes of action for breach of fiduciary duty, conversion, setting aside deed, equitable lien, resulting trust and constructive trust. While Plaintiffs allege that they have undergone severe emotional distress and demand actual and punitive damages, there has been no evidence presented by the Plaintiffs which would support these allegations or shed light on the alleged damages.

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**Tenth Cause of Action for Civil Conspiracy:**

Once again, the Plaintiffs have failed to prove the essential elements of this cause of action, i.e., additional acts in furtherance of the conspiracy other than those alleged in other causes of actions (*Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984) *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985)) and special damages (*Pye v. Estate of Ford*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006)).

Plaintiffs' allegations are tantamount to nothing more than the same tortious acts which are alleged in other causes of action and the same damages which are demanded in and recoverable again through other causes of action.

Attorney's fees incident to proving the civil conspiracy are not in and of themselves special damages. If that were the case, the element of special damages would be rendered meaningless. More importantly, it is well established in South Carolina that attorney's fees are not recoverable unless authorized by contract or statute. *Dowaliby v. Chambliss*, 344 S.C. 558, 544 S.E.2d 646 (Ct. App. 2001), citing *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997) and *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

**Eleventh Cause of Action for Intentional Interference with Inheritance:**

Even assuming, as Plaintiffs argue, that the tort of intentional interference with inheritance has neither been adopted nor rejected in the State of South Carolina, the elements of such a cause of action include "an intentional interference with that expectancy through tortious conduct". In *Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 10, n.4, 542 S.E.2d 715, 717 n.4 (2001). Again despite ample opportunity, the Plaintiffs have failed to proffer any evidence to support the alleged intentional and improper interference with their inheritance rights.

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**Twelfth Cause of Action for Breach of Contract and Fourteenth Cause of Action for Breach of Contract Accompanied by Fraudulent Act:**

South Carolina Probate Code Sections 62-3-1101 and 62-3-1102 require court approval of any compromise as a sine qua non to the enforceability and binding effect of any such compromise. In June of 2011, the Plaintiffs made a motion for such approval and specifically cited these sections. Since the probate court denied this motion, the alleged mediation agreement was not converted into a binding contract. Absent a binding contract, there can be no cause of action for breach of contract.

While it is true that the probate court reached its decision based on the evidentiary constraints imposed by mediation, Plaintiffs have done nothing in the interim to obviate those evidentiary constraints. No admissible evidence has been proffered which would support a further motion to approve the alleged mediation agreement as fair and reasonable.

S.C.R.P.C. Rule 5(d)(5) further supports the Defendants' position that compromises in probate court are subject to court approval and specifically requires:

If a full or partial agreement is reached during the mediation conference, the agreement shall be reduced to writing signed by the parties. **Within thirty (30) days of the conclusion of the mediation conference, the parties shall pursue court approval of the terms of the settlement through either the submission of a consent order or motion filed with the court.** (emphasis supplied)

This rule highlights the inconsistencies between the probate code and S.C.R.C.P. Rule 43(k) which does not require court approval for a written and signed agreement to be binding. Faced with such an inconsistency, S.C.R.C.P. Rule 81 mandates that the probate court rule takes precedence.

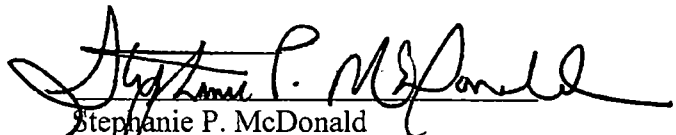
Finally, "in order to recover for breach of contract accompanied by fraudulent act, the Plaintiffs must establish not only that the breach was accomplished with a fraudulent intention, but more importantly, that the breach was accompanied by a fraudulent act". *Minter vs. GOCT, Inc*, 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996). The Plaintiffs have not pled any such fraudulent action on the part of the Defendants, separate and distinct from the alleged breach of contract.

**Remand to Probate Court:**

The Court's decision to remand this matter to probate court is warranted for the reasons set forth in the Court's Order entered on October 21, 2014, and as further supported in this Order denying reconsideration.

**ACCORDINGLY**, the Plaintiffs' Motion for Reconsideration is hereby denied and the Order of this Court entered on October 21, 2014 is hereby confirmed.

**AND IT IS SO ORDERED.**

  
Stephanie P. McDonald  
Presiding Circuit Court Judge

April 30, 2015  
Charleston, South Carolina