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JUN 29 2015

CASE NO. 2013 CP-24-7

Charles Quattlebaum

SC Court of Appeals

Stephen Howard Tabor, et. al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- 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

FILED COMMON PLEAS
 8th JUDICIAL CIRCUIT
 GREENWOOD, SC
 2015 MAY 27 PM 5:02

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: The Motion to Reconsider is denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

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)
		\$
		\$
		\$
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.

[Handwritten Signature] 2167 *5/26/15*

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of May, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Lance Sheek
ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Michael Turner, Sr.
ATTORNEY(S) FOR THE DEFENDANT(S)
[Signature]
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
2013-CP-24-00007

Charles Quattlebaum,)
)
Plaintiff,)

vs.)

Stephen Howard Tabor, a/k/a Stephen H.)
Tabor, individually; Stephen Howard Tabor)
As Trustee for Stephen Howard Tabor Trust;)
Stephen Howard Tabor, Trustee for Stephen)
Howard Tabor Trust, and his successors in)
Trust under the Stephen Howard Tabor Trust)
Dated March 14, 1995, and any amendments)
There to; Stephen H. Tabor and Michael E.)
Tabor, Successor Co-Trustees of the Tabor)
Family Trust dated September 10, 1982;)
Michael E. Tabor and Stephen H. Tabor,)
Trustees of the Tabor Family Trust dated)
September 10, 1982;)
)
Defendant.)

ORDER

2015 APR 21 PM 5:22

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

This matter was tried before me in a non-jury trial on March 3, 2015 and by agreement of the parties, one witness' testimony was taken on March 13, 2015 to conclude the matter. Present for the hearing were the Plaintiff, his attorney, Lance Sheek; Esquire, the Defendants, their attorney, J. Michael Turner, Sr., Esquire, and others.

Based upon the testimony and my review of the file, I find that the Plaintiff filed the Summons, Complaint and *Lis Pendens* on the 2nd day of January, 2013 claiming that he owned a one-half interest in five (5) parcels of property identified in the Complaint as Deeds 1, 2, 3, 4, and 5. In due time, the Defendants answered and counterclaimed. The Defendants initially moved to dismiss the Complaint and *Lis Pendens* which Motion was denied. Subsequently the Defendants moved for Summary Judgment. The Motion for Summary Judgment was heard before the Honorable Frank Addy and by Order dated November 3, 2014, Judge Addy granted Summary Judgment with respect to any action Plaintiff maintained concerning Deeds 4 and 5. Summary Judgment was denied with respect to Deeds 1, 2, and 3 ("Kuchta" property). These

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DJS

three (3) properties are described in deeds attached hereto and made a part of this Order.

By Plaintiff's Complaint he alleges causes of action for a constructive or resulting trust, accounting and partition of real estate. Based upon his Complaint and testimony, it appears that Plaintiff's main complaints are that he is entitled to a constructive or resulting trust declaring him to be the owner of a one-half interest in these properties because: a) the properties were purchased using joint funds of the Plaintiff and Defendant Stephen Tabor which were acquired from the sale of a home in California; and b) the properties were purchased collectively by the Plaintiff and Defendant Stephen Tabor at a time when they resided together in a domestic relationship. Based upon these claims, he asked the Court to declare that he is a one-half owner of the subject properties and that the properties should be partitioned.

FINDINGS OF FACT

Based upon the pleadings, evidence, and testimony, I find that the Plaintiff and Defendant Stephen Tabor (hereinafter referred to as "Tabor") began a romantic relationship while living in California in 1979. Sometime thereafter, Plaintiff, the Defendant Tabor, and another individual, Steven LaFargo, entered into a business transaction to purchase a house in Sherman Oakes, California. The testimony establishes that this was to be a "flip" transaction where the house would be purchased, repaired, and sold to make a profit. The agreement was that each party would be entitled to a refund of all financial contributions paid for the purchase of the house and its repairs, each would work on the house, and when it was sold the equity after repayment of the initial financial contributions would be divided. Defendant Tabor, financially supported the transaction, obtained the mortgage on the property, and made the payments on the property. The quick sale did not work out and eventually Tabor purchased the interest of LaFargo (i.e. actually from his mother) for the sum of \$40,000.00. Plaintiff admitted that he did not pay any part of the \$40,000.00 to purchase the interest of LaFargo. Plaintiff alleges that he worked on the house and helped keep it up but also admitted that Tabor made the mortgage payments on the house, the taxes and insurance on the house and that Plaintiff did not make any financial contributions to the house. He testified that his relationship with Tabor was much like a husband and wife with him being the stay-at-home wife taking care of the house, cooking, etc. Plaintiff admitted that he never did make much very much money in his employment and his Social Security earnings records show from 1992 until 2000, he reported a total of \$777.00.

On February 21, 1996, Plaintiff transferred by way of Quit-Claim Deed his interest in the



California property to the Stephen Howard Tabor Trust. The California property was sold by the Stephen Howard Tabor Trust to Josephine Vidal on the 25th day of September, 2001. At that time, the Plaintiff had had no ownership interest in the property for five (5) years. The funds obtained from the sale of the California property were placed into the Stephen Howard Tabor Trust. In 2001, the parties were living in the home of the Defendant Tabor's parents.

In December 2001, the Stephen Howard Tabor Trust purchased the property described in Deed 1. The property was titled in the name of Stephen Howard Tabor, Trustee for the Stephen Howard Tabor Trust. In August 2003, the property described in Deed 2 was purchased by Stephen Howard Tabor, Trustee for the Stephen Howard Tabor Trust. In December 2003, the property described in Deed 3 titled in the name of "Stephen H. Tabor and Michael E. Tabor, Successor Co-Trustees of the Tabor Family Limited Trust dated September 10, 1982" was purchased. This is also referred to as the Kuchta property.

In late 2003 or in 2004, the Plaintiff and Defendant Tabor moved to South Carolina and began residing in the Kuchta property which was owned by the Tabor Family Trust.

Sometime in 2012 the Plaintiff and Defendant Tabor ended their relationship. Tabor testified it was due to the Plaintiff's excessive abuse of alcohol and physical threats. Plaintiff moved into one of the houses on Reynolds Avenue. Plaintiff then instituted this action claiming that the properties were purchased collectively by the Plaintiff and Defendant Tabor at a time when they resided together in a domestic relationship and seeking to establish a constructive or resulting trust in the properties as a result of the same being purchased with joint funds.

As previously stated, Summary Judgment was granted as to Deeds 4 and 5, properties in the name of the Tabor Family Trust. The property described in Deed 3 is also in the name of the Tabor Family Trust and Plaintiff admitted that he had placed no funds into the Tabor Family Trust. Plaintiff also admitted the Defendant Michael Tabor was not involved with the California property and he had no claim against him.

Further, the Plaintiff did not establish or trace any funds he claimed from the sale of property in California which although initially titled also in his name was transferred by him to the Stephen Howard Tabor Trust in 1996. Plaintiff admitted that the Defendant Tabor made all the mortgage payments on the California property and made all the taxes and insurance payments on the California property. While the Plaintiff claimed that joint funds were utilized to purchase the properties in South Carolina, I find that the evidence fails to establish any joint funds were

utilized. It is clear that the Plaintiff divested himself of any ownership interest or claim of ownership by issuing a deed in 1996 of the California property to the Stephen Howard Tabor Trust. Having divested himself of any ownership interest in the California approximately five (5) years before the California property was sold, the Plaintiff has not proven that the funds acquired from the sale of the California were his joint funds.

Likewise, the Plaintiff has not established any fraud, bad faith, abuse of confidence or violation of a fiduciary duty by the Defendant Tabor. These parties lived together for some 15 years after the California property was transferred to the Stephen Howard Tabor Trust. There is simply no evidence to establish fraud, bad faith, or abuse of any fiduciary duty.

I, therefore, find that the Plaintiff has failed to carry the burden of proof to establish his claims of constructive trust or resulting trust or any basis for an accounting.

CONCLUSIONS OF LAW

A constructive trust results from fraud, bad faith, abuse of confidence or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Fraud is an essential element although it need not be actual fraud. A constructive trust arises against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment by questionable means and against good conscience, either has obtained or holds the right to property which he ought not in equity and good conscience hold and enjoy." Halbersberg v. Barry, 302 SC 97, 99, 394 SE 2d 7 (1990). "In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal." Lollis, 291 SC 525, 354 S.E. 2d 559 (1987).

In the case of Doe v. Roe, 323 SC 445 decided by the South Carolina Court of Appeals, the Court refused to impose a constructive trust or recognize an equitable lien in favor of one partner upon the breakup a long-term domestic relationship. In that case, the Court considered the division of real and personal property of two individuals who were involved in an intimate homosexual relationship for a period of 13 years. During that time, real property was titled in both names much as in this case. And, although both parties had co-signed the loan documents in one parcel of land which had been titled jointly, the Court refused to establish a constructive trust or an equitable lien. As in the case of Doe v. Roe, *supra*, I conclude that the elements of a constructive trust are not present and there has been no equitable lien created.

Likewise, I conclude that the Plaintiff has failed to establish a resulting trust. "Equity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property in whole or in part, that for a different reason is titled in the name of another. McDowell v. SC Department of Social Services, 296 SC 89. Plaintiff has not established paying for the purchase of the properties in South Carolina and can prove no funds whatsoever going into any of these properties. The evidence is simply insufficient to establish any form of resulting or constructive trust and the Plaintiff's causes of action must fail.


In his testimony, the Plaintiff also sought to establish some basis for his claims based upon the fact that the parties resided together in a domestic relationship. This Court does not have jurisdiction for equitable distribution or for granting a special equity interest in properties as a result of the Plaintiff's efforts and/or contributions as a homemaker.

I, therefore, find and conclude that the *Lis Pendens* should be canceled and that the Plaintiff's claims for a resulting trust, a constructive trust, accounting or any other relief must fail.

I further conclude that the properties described in Deeds 1 and 2 are the sole property of the Stephen Howard Tabor, Trustee for the Stephen Howard Tabor Trust and Deed 3 is the property of the Stephen H. Tabor and Michael E. Tabor, Successor Co-Trustees of the Tabor Family Limited Trust.

IT IS SO ORDERED.

And
March 13, 2015
Laurens, South Carolina



Honorable Donald B. Hocker
Presiding Judge
Eighth Judicial Circuit

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