

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM LANCASTER COUNTY SC Court of Appeals
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., Respondent,

v.

Howell Jackson Gregory, The Gregory Company, Inc. and The City of Lancaster,
Defendants,

Of Whom Howell Jackson Gregory and The Gregory Company, Inc. are the
Appellants.

MOTION FOR REHEARING

James T. Irvin, Jr., Esquire
IRVIN LAW FIRM, LLC
P. O. BOX 2677
Myrtle Beach, SC 29578-2677
(843) 445-6200
Attorney for The Gregory Company, Inc.
Appellant

Howell Jackson Gregory
P. O. Box 7111
Myrtle Beach, SC 29572-0006
(843) 222-4800
Appellant Pro Se

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE
COURT OF APPEALS OF SOUTH CAROLINA:

For reasons given below, Appellants move to review the decision of the said
Court of Appeals dated and filed June 24, 2015 via a rehearing under Rule 221, SCRAP.

BACKGROUND

(The 2000 Partition suit with Horry County Master-in-Equity J. Stanton Cross, Jr.)

Even though judgment was entered against Howell Jackson Gregory in favor of Ned Gregory, Jr. by Horry County Master-in-Equity J. Stanton Cross, Jr. on April 25, 2006 (two orders, includes the Nunc Pro Tunc Order dated August 10, 2006 for April 25, 2006) the final judgment amount has not yet been properly calculated by the court as the Horry County Clerk of Court failed to reduce the Respondent's award by the credits awarded Appellant causing the transcript of judgment amount to be off by \$25,517.99 and not as ordered by trial judge Cross of this partition action after weighing the equities in the matter and finding that Howell Jackson Gregory who proved the sums that he paid were not contributed toward by Ned Gregory, Jr. was entitled to a total credit of \$25,517.99 against the award to Ned Gregory, Jr. That sum includes an amount of \$7,940.00 that was actually conceded at trial in 2004 by Ned Gregory, Jr. and his counsel, Clifford Welsh for payment of the removal of the gas tanks from a Lancaster property.

(The erred Transcript of Judgment by the Horry County Clerk of Court in 2008)

On June 10, 2008 the Office of Melanie Huggins, Horry County Clerk of Court issued a transcript of judgment for Respondent, Ned Gregory, Jr. which was in error, but the error was not detected until February 7, 2012 at a hearing in Lancaster with the Special

Referee when it was initially presented there to Appellant. Special Referee Tindal could not rule on the erred transcript of judgment as it had come from the partition matter in Horry County and any corrections to be made had to come from Horry County.

(The 2008 Lancaster suit to set aside the Cross deed of the Lancaster tract)

Respondent's suit in Lancaster County to set aside the deed of the Lancaster tract by Master-in-Equity J. Stanton Cross, Jr. to The Gregory Company, Inc. was put on hold by Special Referee Tindal on February 7, 2012 in order that the transcript of judgment dated June 10, 2008 be dealt with in the Horry County Master-in-Equity Court as Special Referee Tindal had no jurisdiction over the amount of the judgment.

(The 2012 and 2013 Motions in Horry County to correct the erroneous judgment)

Since the erred June 10, 2008 Transcript of Judgment issued by the Horry County Clerk of Court there has been an effort from 2012 on by Appellant to have the error by the clerk corrected as the judgment amount in this matter is not final and that issue was presented to the Horry County Master-in-Equity Court in 2012 and 2013 and is a preserved issue on the appeal of that matter which was consolidated with the 2008 case brought by Ned Gregory, Jr. against Howell Jackson Gregory in Lancaster County to have the Master-in-Equity deed set aside for failure to pay the non final judgment which causes the amount including interest to be an extortion attempt by Respondent against the Appellant until the correct judgment amount is finally calculated to become a final judgment.

Appellant's first issue on appeal (A) deals with the Horry County matter of the attempt to have the Appellant's credits calculated into the judgment amount and with the consolidation of those cases (2000 Horry partition and 2008 Lancaster deed set aside) on

appeal on February 25, 2014 by the order of the South Carolina Court of Appeals along with the transmittal letter stating that the consolidated caption for the appeal of the two cases would use the 2008 Lancaster caption with case no. 2013-002370 to include the Horry case with case no. is 2013-002443 (Copy of order and letter attached – pgs. 9, 10) and with only one record on appeal.

It appears from the June 24, 2015 Order of this Court that the appeal from the original 2000 partition action from Horry County of the subsequent motions to correct the erred judgment amount was not considered by the Court as it was properly appealed and consolidated with the Lancaster County 2008 suit to set aside the Master-in-Equity deed to The Gregory Company, Inc. and preserved the non-final judgment issue that this Court said was missing in the said Order. The entire effort by Appellants before the successor Master-in-Equity, Cynthia Graham Howe in 2012 and 2013 was to have the erred judgment amount corrected to include the credits ordered by the trial judge Master-in-Equity, J. Stanton Cross, Jr. to become a final judgment instead of remaining a non-final judgment. The issue of non-final judgment was actually preserved at the trial level.

ARGUMENT

This Order dated June 24, 2015 (pgs. 11-13) must be reviewed and modified to reflect the Appellant's issue of non-final judgment and restore equity to the case at bar.

The trial judge in the 2000 partition action was the Horry County Master-in-Equity, J. Stanton Cross, Jr. During the trial Respondent and his counsel conceded the sum of \$7,940.00 in favor of Appellant, Howell Jackson Gregory for his payment of that sum to remove the gas tanks from the Lancaster property and that Ned Gregory, Jr. did not

contribute towards. In the April 25, 2006 Order of Judge Cross this concession was ordered. Also ordered was any other sums including taxes that Howell Jackson Gregory could prove that Ned Gregory, Jr. did not contribute towards the benefit of the two properties subject of the partition action. Howell Jackson Gregory did prove to Judge Cross two other payments he made in that category, to wit:

- a) Horry County taxes on the Myrtle Beach home for three years (2002, 2003 and 2004) amounting to \$4,077.99 and
- b) New roof on the Lancaster commercial building amounting to \$13,500.00.

The total credits that Judge Cross awarded Howell Jackson Gregory amounts to the sum of \$25,517.99; however, not yet have those credits been computed against the judgment sum in the subsequent court records for Ned Gregory, Jr. and thus an erroneous and/or non-final judgment exists in the matter on appeal preserved from the Horry County partition post trial motions matter on appeal in this consolidated appeal.

The three orders of the successor Master-in-Equity for Horry County include a conceded amount at a hearing in 2013 by Ned Gregory, Jr. and his counsel Palmer Freeman of two checks totaling \$7,597.03 that were paid to Master-in-Equity Cross on August 9, 2006 by Howell Jackson Gregory and Clifford L. Welsh for the benefit of Howell Jackson Gregory and that sum has reduced the non-final judgment amount by that amount already. Those two checks were paid to Judge Cross on August 9, 2006 the day before his Nunc Pro Tunc Order of August 10, 2006 for April 25, 2006.

Further, the successor Master-in-Equity Cynthia Graham Howe admitted in open court at one hearing to Appellant's question "Is the Court taking judicial notice of the fact that the Clerk of Court's office created an error on the June 10, 2008 transcript of judgment?" Answer: "Yes, Sir..." (T. 124, ll. 13-17). Also, in argument Appellant advised the Howe

Court "Since you have acknowledged the transcript of judgment of June 10, 2008 is in error, the whole purpose of me coming to this Court (Horry County Master-in-Equity post trial motions) was to clear up the error." (T. 127, ll 13-15).

Further, successor Master-in-Equity Cynthia Graham Howe failed and refused to give any credit to the trial Master-in-Equity J. Stanton Cross, Jr.'s two April 25, 2006 orders and by doing so she violates Rule 63, SCRPC by her inaction she changes the intent and holding in those orders which she cannot do. Therefore the Cross orders should be held out as the law of the partition case and the proper credit calculations be made.

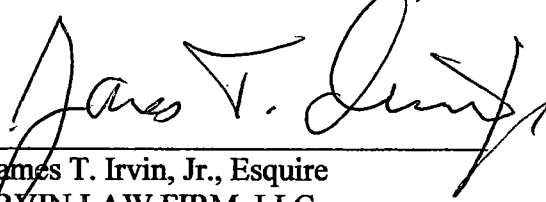
In addition to the first issue on appeal (A) dealing with the erred transcript of judgment the third issue on appeal (C) further questions the ability of Respondent who obtains a faulty transcript of judgment to use same to ask the Lancaster court to set aside a deed from the Horry County Master-in-Equity who tried the partition case, ordered the credits due Appellant, yet Respondent knowing of the conceded sum at trial and the erred judgment issued by the Horry Clerk of Court uses the June 10, 2008 erred transcript of judgment as the basis for his lawsuit, but waits nearly four years to reveal the erred document at a hearing in Lancaster on February 7, 2012. This issue also comes from the Horry County partition case as it hinges on the amount of the judgment which is in error.

Since the two orders of the trial judge of the partition action dated April 25, 2006 (T. 2-5) were not appealed then they become the law of the case and the credits should and must be protected and the erroneous and/or non-final judgment reduced further from \$40,550.44 by applying the credit of \$25,517.99 to now become a final judgment of \$15,032.45.

CONCLUSION

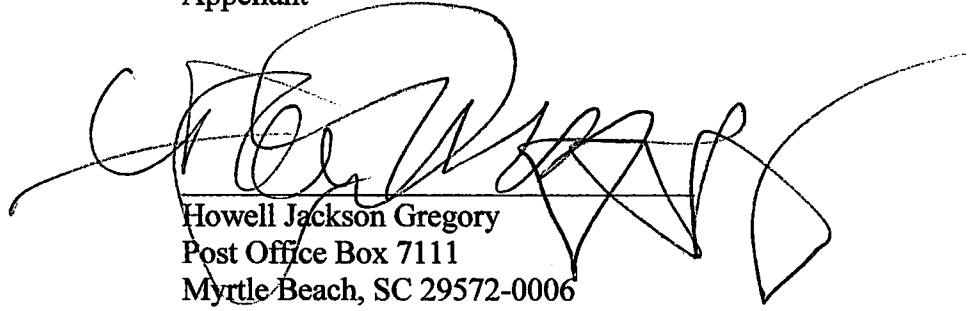
Recognize that the consolidation of the two cases by the Court allowed Appellants to combine the issues on appeal dealing with both cases. Issues A & C from the Horry case as the erroneous transcript of judgment issued by the Horry County Clerk of Court in 2008 was the monetary thrust of the 2008 Lancaster suit to set aside the deed. The actual document of the erred judgment (T.33) was not attached to the lawsuit complaint by Respondent and was not actually seen by Appellants and counsel until February 7, 2012. Why Respondent secreted the document for nearly four years still remains a mystery to date; however, speculation would dictate that four more years of interest on the exorbitant judgment amount as it did not account for the credits due Appellant would generate more money for Respondent in an extortion attempt. In an effort to be fair and as this is still an equity action weigh the equities as Master-in-Equity J. Stanton Cross, Jr. did using all the equitable maximums applicable and reduce the \$40,550.44 by \$25,517.99 to render a final judgment amount of \$15,032.45. Also, by applying equity begin interest from the final judgment date not to include any prior erroneous and/or non-final judgment interest.

RESPECTFULLY SUBMITTED,



James T. Irvin, Jr., Esquire
IRVIN LAW FIRM, LLC
Post Office Box 2677
Myrtle Beach, SC 29578-2677
(843) 222-3228

Attorney for The Gregory Company, Inc.
Appellant

A large, stylized handwritten signature in black ink, appearing to read 'Howell Jackson Gregory', is written over a horizontal line.

Howell Jackson Gregory
Post Office Box 7111
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(843) 222-4800
Pro Se Appellant

Myrtle Beach, SC
July 6, 2015



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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February 25, 2014

Howell Jackson Gregory
PO Box 7111
Myrtle Beach SC 29572-0006

Mr. Palmer Freeman, Jr., Esquire
PO Box 8024
Columbia SC 29202

Re: Ned Gregory v. Howell Jackson Gregory AND Ned Gregory, Jr. v. H.
Jackson Gregory(2)
Appellate Case No. 2013-002370

Dear Counsel:

Please see the attached orders regarding the motions filed with this Court. The matter titled "Ned Gregory v. Howell Jackson Gregory (2)" (case no. 2013-002443) has now been consolidated with the matter titled "Ned Gregory v. Howell Jackson Gregory" (case no. 2013-002370). All future filings in this consolidated matter shall use the caption as shown on the attached order for case no. 2013-002370, and this Court anticipates receiving one record on appeal.

Counsel for the respondent is advised that the respondent's initial brief and designation of matter shall be served and filed no more than thirty days from the date of this letter.

Very truly yours,


CLERK

The South Carolina Court of Appeals

Ned Gregory, Jr., Respondent,

v.

Howell Jackson Gregory, The Gregory Company, Inc.,
and the City of Lancaster, Defendants,

Of whom Howell Jackson Gregory is the Appellant.

Appellate Case No. 2013-002370

ORDER

After careful consideration, the motion to dismiss is denied.

Additionally, the motion to consolidate this case with Appellate Case Number 2013-002443 is granted.


FOR THE COURT

Columbia, South Carolina

cc:

Howell Jackson Gregory
Palmer Freeman, Jr., Esquire
James T. Irvin, Jr., Esquire
Jeff L. Hammond

FILED
2/25/14

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ned Gregory, Jr., Respondent,

v.

Howell Jackson Gregory, The Gregory Company, Inc.,
and the City of Lancaster, Defendants,

Of whom Howell Jackson Gregory and The Gregory
Company, Inc. are the Appellants.

Appellate Case No. 2013-002370

Appeal From Lancaster County
William C. Tindal, Special Referee

Unpublished Opinion No. 2015-UP-306
Submitted June 1, 2015 – Filed June 24, 2015

AFFIRMED

Howell Jackson Gregory, of Myrtle Beach, pro se.

James T. Irvin, Jr., of Irvin Law Firm, LLC, of Myrtle
Beach, for Appellant The Gregory Company, Inc.

Palmer Freeman, Jr., of Whetstone Perkins & Fulda,
LLC, of Columbia, for Respondent.

PER CURIAM: Howell Jackson Gregory and The Gregory Company, Inc. (the Company) (collectively, Appellants) appeal the special referee's order finding (1) a notice of lis pendens was properly filed; (2) a conveyance of real property to the Company was void under section 27-23-10 of the South Carolina Code (2007); (3) Ned Gregory, Jr. held judgments of \$37,490.44 plus interest and \$3,060 plus interest against Howell Jackson Gregory; and (4) the real property should be sold at auction with the proceeds used to pay the judgments.¹ Appellants argue the special referee erred in (1) ordering the sale of real property to satisfy the judgments, which Appellants claim are non-final judgments, (2) finding the notice of lis pendens was properly filed, and (3) finding the conveyance void under section 27-23-10. We affirm.

1. Appellants have not preserved the issue of whether the special referee erred in ordering the sale of the property to satisfy judgments that Appellants argue are non-final. *See B & A Dev., Inc. v. Georgetown Cnty.*, 372 S.C. 261, 271, 641 S.E.2d 888, 894 (2007) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

2. The notice of lis pendens was properly filed. *See* S.C. Code Ann. § 15-11-10 (2005) ("In an action affecting the title to real property the plaintiff (a) not more than twenty days before filing the complaint or at any time afterwards . . . may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby."); *Lebovitz v. Mudd*, 293 S.C. 49, 54, 358 S.E.2d 698, 701 (1987) (holding a notice of lis pendens was properly filed because "[a]n action to set aside a fraudulent conveyance is one 'affecting title to real property'").

3. The special referee did not err in finding the conveyance void under section 27-23-10. *See* § 27-23-10 ("Every gift, grant, alienation, bargain, transfer, and

¹ Howell Jackson Gregory also filed a notice of appeal from an Horry County Master-in-Equity's order denying his motion to alter or amend a judgment under Rule 59(e), SCRCP; however, he did not raise any issues relating to that order in his statement of issues on appeal.

conveyance of lands . . . made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken . . . to be clearly and utterly void, frustrate and of no effect . . ."); *Albertson v. Robinson*, 371 S.C. 311, 317, 638 S.E.2d 81, 84 (Ct. App. 2006) (stating a conveyance may be set aside under section 27-23-10 if the creditor establishes, "(1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt").

AFFIRMED.²

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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In the Court of Appeals

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APPEAL FROM LANCASTER COUNTY
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William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., Respondent,

v.


Howell Jackson Gregory, The Gregory Company, Inc. and The City of Lancaster,
Defendants,

Of Whom Howell Jackson Gregory and The Gregory Company, Inc. are the
Appellants.

PROOF OF SERVICE

I certify that I have served the Motion for Rehearing with supporting authorities on Palmer Freeman, Esquire by depositing a copy of it in the United States Mail, with sufficient postage prepaid on July 7, 2015 addressed as follows, to wit:

Palmer Freeman, Esquire
P. O. Box 8024
Columbia, SC 29201


IRVIN LAW FIRM, LLC
P. O. BOX 2677
Myrtle Beach, SC 29578-2677
(843) 445-6200

July 7, 2015

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July 6, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
P. O. Box 11629
Columbia, SC 29211

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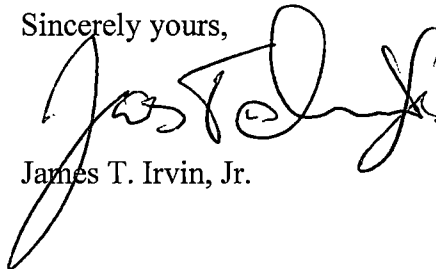
SC Court of Appeals

RE: Consolidated Court of Appeals Case # 2013-002370
Appeal from Lancaster County – Case No. 2008-CP-29-1084
Appeal from Horry County – Case No. 2002-CP-26-1706

Dear Ms. Kitchings:

Enclosed herewith please find the original unbound and seven bound copies of the Motion for Rehearing with regard to the above referenced matter. By copy of this letter we serving the opposing counsel with the same. If you have any questions or need further information, please let me know. With kind regards, I am

Sincerely yours,

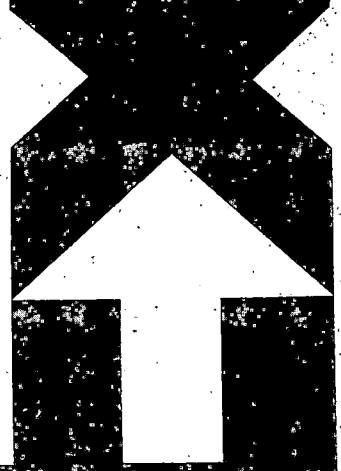


James T. Irvin, Jr.

JTI/jnb
cc: Palmer Freeman, Esq.
Enclosures

P.S. ENCLOSED PLEASE FIND MONEY ORDER FOR \$25.00 TO COVER
THE COSTS OF FILING THE MOTION FOR REHEARING.

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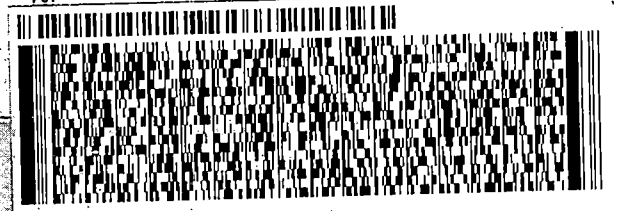
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156297-4859/51818/61455 10/210 458601*

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Company: THE GREGORY CO. INC.
Address: PO BOX 17111
City: MYRTLE BEACH SC ZIP: 29572

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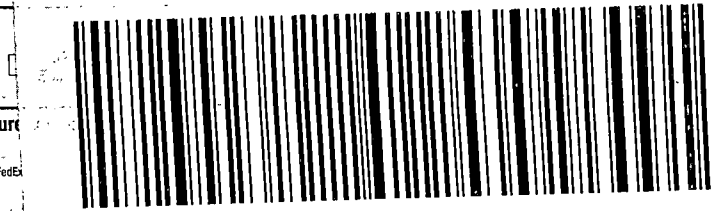
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3 To Recipient's Name: JENNY A. KITCHENS, CLERK
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