

However, Tommy Lovett did appear along with his attorney, David J. Gundling, Esquire. Strickland did not appear and is in default as shown by the Affidavit of Default filed in this matter.

All parties were given notice of the date, time and place of said hearing as shown by the Notice of Hearing and Affidavit of Service filed herein. After hearing argument of counsel and reviewing the Pleadings and Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, along with Exhibits A through G which were admitted into evidence without objection, this Court grants Plaintiff's Motion for Summary Judgment as against the Lovetts and Strickland, and denies Plaintiff's Motion for Summary Judgment as against Fissel-Brown.

Findings of Fact

On or about April 25, 2008, Lovett, for value received, made, executed and delivered unto Bank their certain Promissory Note in writing, wherein and whereby, they promised to pay to the order of Bank the sum of Sixty-Five Thousand One Hundred Fifty and No/100 (\$65,150.00) Dollars pursuant to the terms and conditions of said Note. The Note was secured by a Commercial Security Agreement wherein and whereby Lovett granted to the Bank a security interest in 3,505 shares of HCSB Financial Corporation Stock.

Thereafter, the above referenced loan was renewed on April 24, 2009, April 27, 2010, April 4, 2011, August 26, 2011 and finally on February 23, 2012 wherein Lovett, for value received, made, executed and delivered unto Bank their final Promissory Note in writing, wherein and whereby they promised to pay to the order of Bank the sum of Sixty-Three Thousand Six Hundred Fifty and No/100 (\$63,650.00) Dollars pursuant to the terms and conditions of said Note. The final Note was also secured by a Commercial Security Agreement dated April 27, 2010 that secured the same 3,505 shares of HCSB Financial Corporation Stock.

Thereafter, Lovett defaulted on the above referenced loan, and on January 7, 2013, Lovett was mailed a Notice of Default by Plaintiff's counsel. On February 14, 2013, the Bank did file its certain Non-Jury Collection and Claim and Delivery action against Lovett, Case No. 2013-CP-26-949, to collect

the indebtedness owed by Lovett to the Bank pursuant to the notes referenced above and for permanent possession of the HCSB Financial Corporation Stock secured by the Commercial Security Agreements referenced above.

Upon consultation with independent counsel, Lovett voluntarily, deliberately and of their own free will entered into a Confession and Consent to Judgment on May 22, 2013, which Confession and Consent to Judgment was filed May 22, 2013 in the sum of Seventy-Two Thousand Eight Hundred Sixty-Eight and 53/100 (\$72,868.53) Dollars. This sum included a credit for the value of the 3,505 shares of HCSB Financial Corporation Stock that Lovett also surrendered to the Bank.

By Contract for Deed dated November 28, 2012 and recorded January 23, 2013 in Deed Book 3633 at Page 2053 in the Office of the Register of Deeds for Horry County, South Carolina, Lovett conveyed to Fissel-Brown an equitable interest in and to the following described property:

TRACT ONE:

All that certain piece, parcel or lot of land lying and being situate in Floyds Township, Horry County, South Carolina, containing 2.2 acres and being bounded as follows, to wit: Northwest by lands of Julius Granger and Patricia Lee and David Montgomery; Southeast by Causey Road and Seaboard Coastline Railroad; Northwest by lands of J. M., Jr. and Evelyn B. Stanley; and Southwest by Ira L. Huggins.

This being the identical property conveyed by Jimmy Bullard by Deed of James R. Bullard, Evelyn B. Stanley, Henry S. Bullard, Charles R. Bullard, Marie H. Bullard Elliott, and Patricia Ann Bullard recorded June 23, 1995 in Deed Book 1806 at Page 194, records of Horry County.

TMS#: 001-00-01-009

DERIVATION: Deed Book 3310, Page 2555. For origin of Deed of Distribution see Estate of Jimmy Bullard files in 07-ES-33-22 as appears in Marion County Probate Court.

TRACT TWO:

All that certain piece, parcel or lot of land, lying and being situate in Floyds Township, Horry County, South Carolina containing one (1) acre, more or less, and being bounded and described as follows, to wit: Beginning at an iron stake in a ditch, the said stake being the corner

between land now or formerly owned by Julius Grainger, and Ira Huggins, and running S 40 degrees, 30 minutes E 162 feet along the Grainger line to an iron stake, thence S 53 degrees 07 minutes W 274 feet to an iron stake on the Juggins line; thence N 37 degrees 53 minutes W 161.5 feet to the center line of a ditch; thence along the ditch N 53 degrees 00 minutes E 264 feet to the beginning point, and being bounded on the Northeast by lands now or formerly owned by Julius Grainger; Southeast by other lands of J. M. Stanley, Jr. and Evelyn Bullard Stanley, and on the Southwest and Northwest by lands of Ira Huggins.

Said lot being that certain parcel conveyed to us by James Alton Bullard and Retha S. Bullard by their certain deed dated September 10, 1971, and recorded in the Office of the Clerk of Court in Deed Book 456, at Page 185, in Horry County.

Said lot deed to James Alton Bullard and Retha S. Bullard by Jimmy Bullard in his certain deed dated June 28, 1971, and recorded in the Office of the Clerk of Court for Horry County, in Deed Book 451, Page 409.

DERIVATION: Book 1707, Page 437; Deed Book 3310, Page 2553; Deed Book 3313, Page 2366; Deed Book 3310, Page 2369. For origin of Deed of Distribution see Estate of Jimmy Bullard filed in 07-ES-33-22 as appears in the Marion County Probate Court. Also see Deed of Distribution in Estate of J.M. Stanley, Jr. filed in 92-ES-26-706 in Deed Book 1685, Page 418, and Quitclaim Deed from Kathy Stanley Jackson to Carolyn R. Bullard, Life Tenant and James Scott Bullard Remainederman, dated February 3, 2010, as is recorded in Deed Book _____ at Page _____.

TMS#: 001-00-01-018

Tract One and Tract Two described above being the identical property that Tommy Lovett and Mary Lovett conveyed an interest to Laurie A. Fissell-Brown by Contract of Deed dated November 28, 2012 and recorded January 23, 2013 in Deed Book 3633 at Page 2053 in the Office of the Register of Deeds for Horry County, South Carolina.

By Title to Real Estate dated February 4, 2013 and recorded February 4, 2013 in Deed Book 3636 at Page 150 in the Office of the Register of Deeds for Horry County, South Carolina, Lovett conveyed to Strickland the following described property:

TRACT ONE:

ALL AND SINGULAR, all that certain piece, parcel or tract of land situate, lying and being in Green Sea Township, County and State aforesaid, containing sixty-nine hundredths (0.69) acre, more or less,

according to map made for the grantee by S.D. Cox Surveyors, Inc. dated May 18, 1979, copy of which is attached hereto and made a part of this description and is to be recorded herewith.

Being a part of a tract acquired by the grantors from Ollie Strickland, et al, deed filed for record on February 26, 1968, and recorded in deed book 382/238, Horry County Records.

DERIVATION: Deed book 643, at Page 376, Horry County ROD.

TMS#: 010-00-01-066

TRACT TWO

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Green Sea Township, County and State aforesaid, and containing 27.6 acres, more or less, being more particularly bounded and described as:

Beginning at the northeast corner of Tract 2 as a state and gum pointers in the run of a branch; thence North 21 degrees West 2 chains and 55 links to a spike, North 56 degrees 40 minutes West 5 chains and 52 links to a lightwood stump; thence North 1 degree East 10 chains and 67 links to a gum stump on the north side of the road; thence South 71 degrees 30 minutes West with an old like 23 chains and 66 links to the north corner of Tract 2; thence South 36 degrees 12 minutes East 4 chains and 39 links to the corner of a ditch; thence South 10 degrees East with the center of said ditch 3 chains and 56 links to a stake; thence South 84 degrees East 15 chains and 3 links to a stake in the center of said road; thence North 87 degrees East 10 chains and 12 links to the beginning corner.

For a more detailed description, reference is craved to a certain map or blue print by T.P Hinson for J. Hilbert Strickland dated February 1949 and recorded in Plat Book 8 at Page 7-A. This tract is designated as Tract no. 3 on the said map or blue print.

This is the property conveyed by Eunice S. Lovett et al to the Grantors herein by deed recorded September 27, 1983 in Deed Book 822, at Page 55, records of Horry County.

LESS AND EXCEPTING from the above parcel are two tracts of land:

- (a.) 1 acre deeded to Roger Lovett, Book 1130, Page 644; and
- (b.) .7 acre deeded to Tommy Lovett, Book 643, Page 376.
- (c.) Any and all other out conveyances of record.

DERIVATION: Deed Book 822, at Page 555, Deed Book 1231, at Page 637 and

TMS#: 010-00-01-036

TRACT THREE:

ALL AND SINGULAR that certain piece, parcel or tract of land situate, lying and being in Green Sea Township, Horry County, South Carolina containing 6.57 acres, more or less, shown and designated as Tract No. 6 on that certain map of several parcels of land in Green Sea Township, Horry County, South Carolina surveyed for Leona Strickland by Robert D. Inman, R.L.S., of Inman Surveying and Mapping, dated January 12, 1983. A copy of said map is recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 75, at Page 123, reference to which is craved as forming a part and parcel thereof. Together said Tract # 6 is more particularly described on said map as follows:

Beginning at an iron stake in the middle of an unnumbered county road and continuing North 4 degrees 30 minutes 50 seconds East for a distance of 94.77 feet to an iron stake; thence North 84 degrees 3 minutes 0 seconds East for a distance of 991.96 feet to an iron stake; thence North 0 degrees 37 minutes 10 seconds East for a distance of 234.96 feet to an iron stake; thence North 36 degrees 54 minutes 0 seconds West for a distance of 359.53 feet to an iron stake; thence South 13 degrees 47 minutes 30 seconds West for a distance of 1,205.27 feet to an iron stake; thence South 87 degrees 10 minutes 40seconds East for a distance of 1,359.45 feet to an iron stake at the beginning point.

Said property being the identical property devised to Leona Strickland, Franklin Strickland, James Strickland, Sadie Ray Soles, Martha Faye Britt, Billy Joe Strickland and Ovaline S. Fax by Will of Wallie Strickland dated February 12, 1980 and found in the Probate Records 16-1-71 in the Office of the Clerk of Court for Horry County, South Carolina.

Said property being the identical property devised to James Strickland by deed from Leona Strickland, Franklin Strickland, James Strickland, Sadie Ray Soles, Billy Joe Strickland, Martha Faye Britt and Ovaline S. Fax dated 5 February 1983 and recorded in the Clerk of Court for Horry County, South Carolina and in Book 783, Page 23.

DERIVATION: Deed Book 1658, at Page 694, Horry County ROD

TMS# 010-00-01-077

Tracts One, Two and Three above being the identical properties conveyed by Tommy Garland Lovett and Mary Lou Lovett to Christopher Hybert Strickland by deed recorded February 4, 2013 in Deed Book 3636 at Page

The consideration recited in the granting clause of the Title to Real Estate was "One Dollar and No/100 (\$1.00) and Love and Affection...." Some "Whereas" recitals contained in the Title to Real Estate referenced an agreement that Strickland would provide Lovett with "necessary care and maintenance and medical care needed" for Lovett. However, that language was not recited in the granting clause. In addition, there is reference in another "Whereas" to a contract between Lovett and Strickland that specifies the "terms and conditions of the services to be rendered to [Lovett]". However, that agreement, nor the terms and conditions were presented at the hearing, and both Lovett and Strickland have admitted by their failure to answer the complaint that the consideration for this transfer was insufficient or non-existent. Furthermore, Strickland lives in Florida, making it impractical for him to provide any such services.

Evidence was also admitted without objection that Lovett transferred eight (8) parcels of land in Columbus County, North Carolina, to a son, Tommy Garland Lovett, Jr., by General Warranty Deed dated and recorded October 24, 2012, and re-recorded January 22, 2013 in the Office of the Register of Deeds in Columbus County (Exhibit "C"). The only consideration recited therein is "valuable".

Thereafter, on February 17, 2014, the Plaintiff filed its Civil Action Coversheet, Lis Pendens, Summons and Verified Complaint in the instant action alleging that:

1. The consideration paid by Strickland to Lovett was insufficient or even possibly nonexistent for the three (3) tracts of land conveyed to Strickland.
2. The consideration paid by Fissel-Brown to Lovett was insufficient or even possibly nonexistent for the two (2) tracts of land conveyed to Fissel-Brown.
3. The transfer of all five (5) tracts of land above referenced were conveyances to defraud the Plaintiff as they were transferred without consideration or made with actual intent to defraud the Bank and were made when Lovett was indebted to the Bank at the time of the transfer

and, as a result of the transfers, Lovett does not have sufficient assets to pay their indebtedness to the Bank

4. Strickland and/or Fissel-Brown received the conveyance from Lovett with knowledge of fraudulent intent on the part of Lovett and/or with intent to assist Lovett in such fraudulent purpose, and to hold the real estate conveyed as a secret trust for the use and benefit of Lovett.
5. That the above referenced transfer of the five (5) tracts of land were in violation of S.C. Code Ann. § 27-23-10, and are clearly and utterly void, frustrate and of no effect, and that the Plaintiff is entitled to an Order of this Court voiding said transfers such that its judgment will attach to the fee simple interest of all five (5) tracts of land above referenced and have priority over any interest conveyed by Lovett on those properties subsequent to April 25, 2008.

Thereafter, on March 5, 2014, Lovett was served with the above referenced pleadings as shown by the Affidavits of Service filed herein. Fissel-Brown was served on February 20, 2014 and Strickland was served on February 24, 2014. Fissel-Brown timely answered the Complaint on March 4, 2014.

Thereafter, on July 14, 2014, Plaintiff, Lovett and Lovetts' son, T.G. Lovett entered into an Agreement wherein they agreed *inter alia*, that Lovett would pay Plaintiff's judgment amount in full, plus all accruing post-judgment interest and attorney's fees from proceeds from the sale of sufficient pieces of properties in North Carolina that Lovett conveyed to T.G. Lovett on October 24, 2012 within seven (7) months from the date of the Agreement, February 15, 2015. In exchange, the Plaintiff agreed to hold the instant action in abeyance until the expiration of the seven (7) months.

Lovett failed to make any payment to the Plaintiff on or before February 15, 2015, and on March 31, 2015, Plaintiff filed its Affidavits of Default on Lovett and Strickland for failure to answer the Complaint. On April 2, 2015, the Order of Reference was filed referring this matter to the undersigned. The Affidavits of Default and Order of Reference were served on Lovetts' counsel on April 13, 2015. Plaintiff's Motion for Summary Judgment and Memorandum in Support of Summary Judgment were filed April 15, 2015 and served on Lovetts' counsel the same day, along with a Notice of Hearing. On

May 8, 2015, at 4:05 p.m. Tommy Lovett filed his Affidavit in opposition to Plaintiff's Motion for Summary Judgment. Since this Affidavit was not served timely pursuant to Rule 56(c), SCRPC, and Lovett is in default, this Court did not consider the matters alleged therein.

The Plaintiff is seeking to have the conveyances from Lovett to Fissel-Brown and Strickland be declared void, frustrate and of no effect, set aside and annulled, and subject to the Lien of the Plaintiff's judgment as of the date the Plaintiff obtained its judgment against Lovett, May 22, 2013.

Legal Analysis

The Statute of Elizabeth, as codified in S.C. Code Ann. §27-23-10 (1976 As Amended), governs fraudulent conveyances and provide a relevant part:

“Everyconveyance of land... which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful... debts, accounts, damages... must be deemed and taken ...to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.”

Under this section:

“conveyances may be set aside under two conditions: first, where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee even though there is a valuable consideration; and, second, where a transfer is made without actual intent to defraud the grantor's creditors, but without valuable consideration.” Albertson v. Robinson, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (Ct. App. 2006).

To determine whether there was an actual intent of defrauding creditors, courts consider the nine (9) Badges of Fraud. *In re Haddock*, 246 B.R. 810 (2000). If the transfer is without actual intent to defraud, but without valuable consideration, courts then move on to a second prong and will set aside a transfer:

“only when the creditor establishes the following: (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.” Albertson at 371, 84.

A conveyance is voluntary where there is nominal or no consideration. *In re Amelung*. The burden of proving fraud is on the creditor unless the transfer is to a member of the debtor's family without consideration. Then the burden shifts to the transferee to prove both valuable consideration and the bonafides of the transaction by clear and convincing evidence. My findings and conclusions of law are based on the following facts:

1. At the time Lovett transferred the three (3) tracts of land to Strickland described in Deed Book 3636 at Page 150, Lovett were debtors of the Plaintiff. As stated above, the indebtedness originated on April 25, 2008, and the transfer of the property was by a Deed dated and filed February 4, 2013.
2. At the time Lovett transferred an equitable interest in the two (2) tracts of land to Fissel-Brown, Lovett were debtors of the Plaintiff. The transfer of the equitable interest to Fissel-Brown was by Contract for Deed dated November 28, 2012 and recorded January 23, 2013 in Deed Book 3633 at Page 2053.
3. No consideration was given to Lovett by Strickland in exchange for the transfers of the three (3) tracts of land as admitted by Lovett and Strickland by their failure to answer the Complaint. Strickland is Tommy Lovett's first cousin.
4. There is a question of fact whether the consideration paid by Fissel-Brown to Lovett was sufficient. There is also a question of fact whether there is any family relationship between Fissel-Brown and Lovett.
5. The transfers of the three (3) pieces of property to Strickland were voluntary since the transfers were without sufficient consideration.
6. The Plaintiff is seeking collection of its judgment obtained against Lovett pursuant to the Confession of Judgment signed by Lovett and filed May 22, 2013 in the case of Horry County State Bank v. Tommy G. Lovett a/k/a Tommy Lovett and Mary Lou Lovett, Case Number

2013-CP-26-949 in the amount of Seventy-Two Thousand Eight Hundred Sixty-Eight and 35/100 (\$72,868.35) Dollars, plus post-judgment interest.

7. Lovett has not retained sufficient property to pay their indebtedness to the Bank in full, both at the time of the transfers and through and including the date of the hearing, May 12, 2015.
8. The transfers by Lovett to Strickland and Fissel-Brown were made with actual intent on the part of Lovett to defraud the Plaintiff.
9. Strickland received the conveyances of the three (3) tracts of land to him from Lovett with knowledge of fraudulent intent on the part of Lovett and with the intent to assist Lovett in such fraudulent purpose, and to hold the real estate conveyed to Strickland as a secret trust for the use and benefit of Lovett.
10. The transfers of the three (3) tracts of land to Strickland were in violation of the Statute of Elizabeth, S.C. Code § 27-23-10, are clearly and utterly void, frustrate and of no effect, entitling the Bank to an Order of the Court voiding those transfers so that the Bank's judgment will attach to those three (3) tracts of land.

Conclusions of Law

I, therefore, conclude as follows:

1. I find that this Court has jurisdiction over this matter and the parties hereto.
2. I find that the Defendants Lovett and Strickland have admitted all allegations contained in the Plaintiff's Complaint by said Defendants' failure to deny them pursuant to Rule 8, SCRPC.
3. I find that the consideration paid by Strickland to Lovett for the three (3) tracts of land transferred to Strickland in the Title to Real Estate was insufficient or nonexistent.
4. I find and conclude that there is a question of fact as to whether the consideration paid by Fissel-Brown for the two (2) tracts of land transferred to her by Lovett was insufficient or nonexistent.

5. I find and conclude that the transfers of the three (3) of land transferred to Strickland were conveyances to defraud the Plaintiff as they were transfers without consideration or insufficient consideration, or made with actual intent to defraud the Bank, were made when Lovett was indebted to the Bank at the time of the transfers and, as a result of the transfers, Lovett does not have sufficient assets to pay their indebtedness to the Bank.
6. I find and conclude that the Defendant Strickland received the conveyance of the three (3) tracts of land from Lovett with knowledge of fraudulent intent on the part of Lovett and with the intent to assist Lovett in such fraudulent purpose, and to hold the real property as a secret trust for the use and benefit of Lovett.
7. I find that the above referenced transfer of the three (3) tracts of land to Strickland were in violation of S.C. Code Ann § 27-23-10, and are clearly and utterly void, frustrate and of no effect, and the Plaintiff is entitled to an Order of this Court voiding said transfers so that its judgment will attach to those three (3) tracts of land.
8. I find and conclude that there is a question of fact as to whether the transfer of the two (2) tracts of land to Fissel-Brown were in violation of S.C. Code Ann § 27-23-10, and the Plaintiff is not entitled to an Order of this Court voiding said transfers at this time.

Based upon the foregoing, IT IS

ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Summary Judgment with regards to the Contract for Deed from Lovett to Fissel-Brown filed January 23, 2013 in Deed Book 3633 at Page 2053 in the Office of the Register of Deeds for Horry County, South Carolina is denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the conveyance of the three (3) tracts of land from Lovett to Strickland recorded February 4, 2013 in Deed Book 3636 at Page 150 in the Office of the Register of Deeds for Horry County, South Carolina was a conveyance to defraud Horry County State Bank and a violation of S.C. Code Ann. § 27-23-10, and as such, is clearly and utterly void, frustrate and of no effect, having vested no title to those tracts of land to Strickland.;

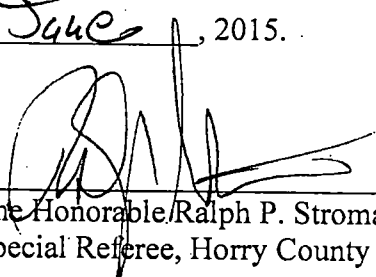
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that title to the three (3) tracts of land conveyed to Strickland are vested in fee simple to Tommy Garland Lovett a/k/a Tommy G. Lovett a/k/a Tommy Lovett and Mary Lou Lovett;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Horry County State Bank's judgment obtained against Tommy G. Lovett a/k/a Tommy Lovett and Mary Lou Lovett that was filed May 22, 2013 in the case of Horry County State Bank v. Tommy G. Lovett a/k/a Tommy Lovett and Mary Lou Lovett Civil Action No. 2013-CP-26-949 attached to and became a lien and encumbrance upon the three (3) tracts of land conveyed to Strickland on May 22, 2013, entitling Horry County State Bank to all of the rights and remedies afforded by law to a judgment creditor with regards to collection of a judgment;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment obtained by Horry County State Bank referenced above is a first priority lien upon the three (3) tracts of land conveyed to Strickland; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this Order that has been filed with the Horry County Clerk of Court shall also be filed in the Office of the Register of Deeds for Horry County, South Carolina and indexed under the names of Christopher Hybert Strickland, as Grantor, and Tommy Garland Lovett a/k/a Tommy G. Lovett a/k/a Tommy Lovett and Mary Lou Lovett, as Grantees, and this shall be record notice that the February 4, 2013 conveyance of the three (3) tracts of land to Christopher Hybert Strickland recorded in Deed Book 3636 at Page 150, are clearly and utterly void, frustrate and of no effect whatsoever.

AND IT IS SO ORDERED this 30th day of June, 2015.



The Honorable Ralph P. Stroman,
Special Referee, Horry County

Conway, South Carolina