

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE COURT OF COMMON PLEAS
Kathleen Lollis and Linda Campbell

JUDGMENT IN A CIVIL CASE

LYNN W. LANCASTER
CASE NO. 2013-CP 30-0051

Lisa Dutton, Dennis Dutton and Jesse Dutton

COPY

2015 JUL -6 P 12: 33

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Defendant

Attorney for : Plaintiff Defendant
or

LAURENS COUNTY CLERK OF COURT 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

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 :

INFORMATION FOR THE PUBLIC 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.

A TRUE COPY OF ORIGINAL

Circuit Court Judge

Lynn W. Lancaster

2154
Judge Code

07/02/15
Date

LYNN W. LANCASTER
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) FOR THE EIGHTH JUDICIAL CIRCUIT

2015 JUL -6 P 12:33

~~Kathleen Lollis and~~
Linda Campbell,

Plaintiffs,

vs.

Lisa Dutton, Dennis Dutton,
And Kelsey Dutton

Defendants.

LAURENS COUNTY
CLERK OF COURT

FINAL ORDER

2013-CP-30-00513

Date of Hearing: March 16, 17, 18 and 19, 2015
Presiding Judge: Eugene C. Griffith, Jr.
Attorney for Plaintiff: Elizabeth D. Medlin
Attorney for Defendant: John R. Ferguson
Court Reporter: Joy Holston

This case came before me as a bench trial. Present at the call of the case were the Plaintiffs with their counsel, Elizabeth D. Medlin, and the Defendants with their counsel, John R. Ferguson. The gravamen of the case concerns ownership of two tracts of land and the validity of two contracts of sale for these two tracts of land and a mobile home. Plaintiffs' claim that the documents relied upon by the Defendants are forgeries and therefore void. They are seeking to be declared the legal and equitable owners of the property. The Defendants answered and counterclaimed for enforcement of the contracts of sale and seek deeds to the land and clear title to one of the mobile homes. Clear title to one mobile home is not in dispute. After a four day bench trial, this Court makes the following findings of fact and conclusions of law. This Court has

1. *settled*

further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

FINDINGS OF FACT:

1. ~~The properties at issue are located in Laurens County and all of the parties are~~ residents of Laurens County.
2. Legal title to the subject land is held in Plaintiff, Kathleen Lollis. Legal title to the trailer is in Lisa Dutton's name, subject to a lien in favor of Plaintiff, Linda Campbell.
3. Plaintiff, Kathleen Lollis is the mother of Plaintiff, Linda Campbell. Frank Lollis, now deceased, is the child of Kathleen Lollis and sibling of Linda Campbell.
4. Prior to his death, Frank Lollis had been a very successful business man who owned a business which involved moving and setting up trailers; a business grading land, hauling gravel, and installing septic tanks; and a business buying and selling land and trailers. He also operated a family owned general store with the help of the Plaintiffs. Abundant evidence was presented that he dealt in large quantities of cash.
5. Frank Lollis avoided having real and personal property in his name and often put his acquisitions in the name of his mother and others.
6. The Lollis family lawyer, John Scurry, Jr., testified he believed that Frank Lollis had a power of attorney to sign documents on behalf of his mother and that she knew he was signing on her behalf.
7. Frank Lollis frequently signed other people's signatures to documents to facilitate sales of property both real and personal. Defendant, Lisa Dutton testified that Kathleen Lollis' signature was already on her Contract of Sale when she went to John Scurry's office to sign it.
8. The Defendants presented testimony that they had a close personal relationship with Frank Lollis and did a lot of business with him. The receipts and cancelled checks presented by Defendants in support of their claim to have paid off their

contracts are consistent with one another but differ from the handwriting exemplars of Frank Lollis submitted in evidence by the Plaintiffs.

9. Defendants' Exhibit 31 is a set of bank copies of checks from Defendant, Lisa Dutton made out to and endorsed by Frank Lollis. His endorsements on these checks differ materially from the exemplars submitted by the Plaintiffs.
10. Defendants' Exhibit 29 is a receipt signed by Frank Lollis showing that he received \$35,000.00 from Lisa Dutton. Testimony was given that Frank Lollis formally acknowledged his signature in the presence of Heather Fields, the Ware Shoals Town Clerk. She was able to confirm that Frank Lollis was the person who signed it by looking at a copy of his driver's license (Defendant's Exhibit 1). She testified that on that day that he appeared to be lucid and not under any disability. Ms. Fields stated that Frank Lollis affirmed the validity of the second receipt for \$1,400.00 paid by Lisa Dutton. I find this testimony by this neutral witness to be credible as of these payments.
- X 11. John Scurry, Jr. testified that it was his opinion that the two parcels of real estate at issue herein had been bought by Frank Lollis. The plat, (Defendants' Exhibit 9), of the real property at issue references that it was prepared for Frank Lollis.
12. Plaintiff, Kathleen Lollis testified that she did not give her son, Frank Lollis, the power to sign documents on her behalf. The Defendants presented a group of documents (Defendants' Exhibit 12) found in the public records of Laurens County Clerk of Court. These documents were recorded over a five year period. The Defendants are not parties to the documents but the documents convey or receive interests in real property in name of Plaintiff, Kathleen Lollis. Plaintiff testified that all of these documents contained forgeries of her signature. I do not find Kathleen Lollis' testimony to be credible that she was unaware or objected to Frank Lollis acting as her agent when conveying or receiving title to real property in her name.
13. The title to Defendant, Lisa Dutton's trailer has a lien in favor of Linda Campbell. (Defendants' Exhibits 49, 50, 51 and 52). Linda Campbell is nowhere in the

chain of its title. Linda Campbell was unable to offer any explanation for the basis for this lien (Defendants' Exhibit 45).

14. Defendants' Exhibit 21 is a bank copy of a \$700.00 check from Lisa Dutton to Frank Lollis. The check references that it is a payment on the subject land and trailer. Plaintiff, Linda Campbell testified that she had no knowledge of Lisa Dutton's claim to be buying the subject property before Frank Lollis died. She endorsed this check below Frank Lollis's endorsement and admits that she deposited it. I find her testimony not credible that she was ignorant of the sale to Lisa Dutton.
15. Plaintiffs testified that during the last year of his life that Frank Lollis was too ill to transact business. Defendants' Exhibit 21 is a check negotiated three weeks before Frank Lollis died. Plaintiff, Linda Campbell testified that she deposited the check at his request. Defendants' Exhibit 10 is the signature card for a joint account the Plaintiffs set up with Frank Lollis about two months before he died. The fact that Frank Lollis was driving within days before his death also indicates that he was healthy enough to understand and conduct his own affairs. Plaintiffs' claims to the contrary are not credible.
16. Defendants' Exhibit 20 is a copy of Frank Lollis' Healthcare Power of Attorney and Living Will. His signatures are quite different from his other signatures on many exhibits introduced at trial.
17. A mistake was made in the referencing the manufacturer and model of Lisa Dutton's trailer in the original Contract of Sale (Plaintiffs' Exhibit 2). At Frank Lollis' direction, his lawyer and others on his behalf corrected the error (Plaintiffs' Exhibit 3). It appears that Frank Lollis signed Lisa Dutton's name on the corrective document. This was confirmed by two neutral witnesses, John Scurry, Jr. and Nancy Ridley.
18. On the same day that Frank Lollis signed a receipt affirming that Defendant, Dennis Dutton had paid him in full for his land and trailer (Defendants' Exhibit 73), he signed over title to the trailer to Dennis Dutton (Defendants' Exhibit 58).
19. Plaintiffs' own expert witness authenticated the signature of Frank Lollis releasing the lien on the trailer title to Dennis Dutton (Plaintiffs' Exhibit 15).

20. Lisa Dutton was living in her trailer long before Plaintiffs filed this action.

Documents from Laurens County Building Codes indicate that Lisa Dutton moved into her trailer not later than February 15, 2012, (Defendants' Exhibits 33-39.). Lisa Dutton changed its tax assessment status to owner-occupied residence and received a homeowner's exemption (Defendants' Exhibit 47).

The Duttons' tax notices (Defendants' Exhibits 48 and 60) were mailed to them at their Cemetery Road addresses. Dennis and Kelsey Dutton testified they were living in the second trailer for about a year before the Plaintiffs filed suit.

21. The Plaintiffs have advanced the claim that Defendants could not have made the payments which they claim to have made because they did not have sufficient income. Lisa Dutton testified that she received a \$19,000.00 settlement for unpaid benefits for her Social Security disability claim. Lisa Dutton testified that she saved monthly Social Security checks given to Defendant, Kelsey Dutton for approximately nine years and then used this money with Kelsey's permission to help buy the land and trailer. Defendants also produced evidence of buying and selling personal property for profit. Lisa Dutton testified that she received a gift of \$8,000.00 from her father when he sold his business upon retirement. Lisa Dutton received \$5,000.00 and \$6,500.00 from the sale of her River Fork Martin Road properties. Dennis Dutton received \$11,000.00 from the sale of his Greenacres lots. Defendants rented and purchased numerous parcels from Frank Lollis (Defendants' Exhibit 40), including a land purchase for \$5,000.00 (Defendants' Exhibit 13), a land purchase for \$6,000.00 (Defendants' Exhibit 23) and a land purchase for \$22,000.00 (Defendants' Exhibit 11). Frank Lollis signed Contracts of Sale on behalf of Kathleen Lollis to convey land and mobile homes to Lisa Dutton for \$48,000.00 (Defendants' Exhibit 54) and for \$74,300.00 (Defendants' Exhibit 11). These documents indicate that the Defendants had financial ability to fulfill the contracts at issue herein.

22. John Scurry, Jr. testified that Frank Lollis did not hesitate to hire him to bring actions when he was selling or renting property and payments were not

received. John Scurry, Jr. testified that he never had to bring such action against the Duttons.

23. It is clear that Frank Lollis was busy at the end of life converting his large equipment and machinery into cash. Barry Adams testified that he assisted Frank Lollis in selling several pieces of large machinery and equipment for substantial money. He testified further that he believed Frank Lollis used this cash to purchase homes for his two nieces.
24. I find that Frank Lollis' practice of not titling property in his name and liquidating of his large equipment prior to his death to be credible. This business practice is consistent with the small size of his estate at his death.
25. The Plaintiffs and the Defendants presented positions which are directly opposed to one another, so resolving the differences in the evidence required assessing the credibility of the parties. Having observed the parties and the witnesses, I find that the Defendants have greater credibility than the Plaintiffs.
26. The Defendants signed valid contracts with Frank Lollis, who was acting as an authorized agent for his mother, Kathleen Lollis. Defendants fulfilled their obligations under Contracts of Sale and are entitled to clear titles to the land and trailer at issue, including the cancellation of the lien in favor of Linda Campbell.
27. Defendants proved that they overpaid for the subject property by \$850.96 for which they are entitled to a refund.

CONCLUSIONS OF LAW:

28. Jurisdiction and venue are properly before this court.
29. Frank Lollis was at all times relevant to this case acting as the authorized agent for the Plaintiffs in his dealing with the Defendants. "The rule is that the principal is responsible for the acts of his agent done within the scope of his authority, real or apparent." Hiller v. Bank of Columbia, 96 S.C 74, 79 S.E. 889, 902 (1913). Frank Lollis's dealing with the Defendants was within the scope of his authority. The relationship of agency need not depend upon express appointment and acceptance but may be implied from the words and conduct of the parties and the circumstances of the particular case. City of Greenville v.

Washington Am. League Baseball Club, 205 S.C. 495, 32 S.E.2d 777 (1945). See 21 S.C. Digest2d "Principal & Agent", s14(1), pp.224-5. Even if there had not been an express agency, "The law creates the relationship of principal and agent if the parties in the conduct of their affairs actually place themselves in such position as requires the relationship to be inferred by the courts, and if from the facts and circumstances of the particular case it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding the denial by the alleged principal and whether or not the parties understood it to be an agency." Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 242, 597 S.E.2d 165 (Ct. App. 2005), quoting Crystal Ice Co. of Columbia v. First Colonial Corp., 273 S.C. 306, 309, 257 S.E.2d 496 (1979). The facts here require that the agency relationship be inferred. "[W]here the owner of property clothes another with apparent title or power of disposition, and thus induces innocent purchasers to buy, they will be protected from an action for conversion, not upon the title or authority of the party from whom they buy, but from the act of the owner, who is estopped from disputing as against them the title or power which he allowed to appear to be vested in the party making the sale. 18 AmJur2d "Conversion", s73, p. 203. Plaintiff Kathleen Lollis clothed Frank Lollis with apparent authority to dispose of property titled in her name. "Where a principal clothes its agent with apparent authority to act in a certain capacity, it is bound by all the acts of such agent within the scope of such authority." Moore v. Pilot Life Insurance Co., 205 S.C. 474, 487, 32 S.E.2d 757 (1945).

30. Even if the Plaintiffs had been ignorant of all the things Frank Lollis did on their behalf over many years (and I do not find that they were), "[Where] agency is established and there is a wrong committed by the agent, [the] principal must ordinarily bear the loss whether the agency is actual or apparent; and equity intervenes under rule [that] where one of two innocent persons must suffer, he who brings about the loss must bear it." Spence v. Spence, 368 S.C. 106, 127, 628 S.E.2d 869 (2006). See also City Lumber Co. v. National Surety Corp., 229 S.C. 115, 121, 92 S.E.2d 128 (1956). I find that the Defendants acted in good


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faith and with reasonable prudence in entering into the Contracts of Sale and the Plaintiffs are estopped to void these contracts. "The apparent authority of an agent results from conduct or other manifestations of the principal's consent whereby third persons are justified in believing the agent is acting within his authority. [citation omitted]

31. By accepting the benefits of the contracts and taking no action to rescind them while Frank Lollis was alive, the Plaintiffs have ratified those contracts and waived any right to object to them. "The right to rescind a contract may be lost, as where there is ratification or waiver. The ratification may be expressed or implied, and the right to rescind for any breach is lost where the breach has been waived by the injured party. Even the right to rescind for fraud or misrepresentation may be waived." 17 AmJur2d "Contracts" s489, p. 960. Having accepted the benefits of the contracts of sale through their agent, Plaintiffs are estopped to retain title to the subject property.
 32. In regard to the declaratory judgement action brought by the Plaintiffs: I find that the Defendants have valid and enforceable rights under the contracts of sale herein.
 33. Plaintiff, Kathleen Lollis has breached her Contracts of Sale with the Defendants and they have been injured from the breach by her failure to convey title to the two tracts of land.
 34. In regard to the declaratory judgement action brought by the Plaintiffs: I find that the Defendants have valid and enforceable rights under the contracts of sale herein.
 35. All other causes of action filed by Plaintiffs are dismissed.
 36. I find that the Defendants have proved that the Plaintiffs breached the contracts of sale and are entitled to specific performance.
 37. All other causes of action of the Defendants are dismissed.
 38. Attorney fees are denied to both Plaintiff and Defendants.
- IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**
39. Plaintiffs shall immediately convey the subject land and mobile home to Defendants in accordance with the Contracts of Sale;

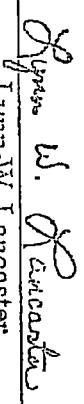
8 JED. 3/9

40. Plaintiffs shall immediately remove and release any liens on Defendants' title to their land and mobile homes;
41. Defendant's overpaid Plaintiffs by \$850.96. Defendants are entitled to a prompt refund in this amount from Plaintiffs;
42. All other causes of action are dismissed;



Eugene C. Griffith, Jr.
Presiding Judge

Newberry, SC
July 2nd, 2015

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCCP & GS