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SC Court of Appeals

IN THE COURT OF COMMON PLEAS
2012-CP-10-6506

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JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
William B. Haskin Jr.)
Plaintiff,)
v.)
Samuel W. Rhodes Jr., Rhodes Investments,)
Inc., Rhodes Consulting, LLC, and Tracey)
M. Bozzelli,)
Defendants.)

**ORDER DENYING IN PART &
GRANTING IN PART PLAINTIFF'S
MOTION TO ALTER AND/OR AMEND
ORDER**

The above captioned case came before this Court for trial on November 16, 17, 18, and 19, 2015, during a term of the Court of Common Pleas for Charleston County. Following trial, the parties were permitted to submit post-trial briefs. This Court rendered an Order of Judgment filed on February 5, 2016 with the Charleston County Clerk of Court's Office. The matter presently before this Court is Plaintiff's Motion to Alter and/or Amend Order filed on February 19, 2016.

STANDARD OF REVIEW

"The power to open, modify or vacate a judgment is possessed solely by the court that rendered the judgment." Coleman v. Dunlap, 306 S.C. 491, 494; 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper "vehicle to request the trial court 'alter or amend the judgment,'" and "to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21; 361 S.E.2d 772, 778 (2004). The Fourth Circuit has held "that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th

Cir. 2007) (internal citations omitted). Based on the issues raised in plaintiff's motion, the only ground applicable to plaintiff's motion to reconsider is whether this Court must alter or amend its decision "to correct a clear error of law or prevent manifest injustice." Zinkand 478 F.3d at 637.

DISCUSSION

This Court's response to Plaintiff's Motion to Alter and/or Amend Order is as follows:

- (1) To rule on and to make specific findings of fact and/or conclusions of law as to what specific Florida or South Carolina laws apply to this case and to what issues they apply.

GRANTED IN PART.

Partnership:

"A 'partnership' is an association of two or more persons to carry on as co-owners a business for profit" S.C. Code Ann. § 33-41-210 (2006). A partnership does not require a written agreement and may be inferred from conduct. Halbersberg v. Berry, 302 S.C. 97, 101; 394 S.E.2d 7, 10 (Ct. App. 1990). To determine if a partnership exists, the following tests have been used: "(1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management." Id. Additionally, subject to exceptions not relevant here, sharing of "the profits of a business is prima facie evidence that he is a partner of the business" S.C. Code Ann. § 33-41-220(4) (2006).

As this Court's Order of Judgment indicates, over the past twenty (20) years, the plaintiff, William Haskin Jr. ("Haskin"), and the defendant Samuel W. Rhodes Jr. ("Rhodes") had formed various limited liability companies. Order of Judgment at 1-2 Haskin v. Rhodes, (2012-CP-10-6506). Each LLC would purchase an unimproved lot, build a home on the lot, and sell the improved lot to a third party. Id. The Form 1065 tax returns presented to this Court indicate the filings were made on behalf of the various



LLCs. Id. at 6. The schedule k-1s presented to this Court indicate that the members of these LLCs were Haskin and Rhodes Investments, Inc. (“Rhodes Investments”). Both the signed and unsigned operating agreements for these various LLCs indicate the members to be Haskin and Rhodes Investments. Id. at 5.

There was no overall “partnership.” Rather, there were a series of joint ventures that were undertaken in the form of LLCs.

LLCs:

South Carolina law provides that “the laws of the State or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and their transferees.” S.C. Code Ann. § 33-44-1001 (2006). One LLC at issue in this case was organized under the laws of the State of South Carolina. Order of Judgment at 2-3 Haskin v. Rhodes, (2012-CP-10-6506). The remaining three LLCs at issue in this case were organized under the law of the State of Florida. Id.

Station 22, LLC:

As this Court’s Order of Judgment indicates, Station 22 is an LLC organized under the laws of the State of South Carolina in 2004. Id. at 3. South Carolina law does not require an operating agreement to be in writing. S.C. Code Ann. § 33-44-103(a) (2004). As the official comments note “[c]ourse of dealing, course of performance and usage of trade are relevant to determine the meaning of the agreement” Id. cmt.

Based on the findings of fact explained in this Court’s Order of Judgment, this Court found that the agreement between the parties regarding the business operations of Station 22, LLC did not include one in which Rhodes or Rhodes Investments would



contribute to losses sustained by Haskin. Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

2624 Myrtle, LLC & 2802 Middle, LLC:

As this Court's Order of Judgment indicates, 2624 Myrtle, LLC and 2802 Middle were organized under the laws of the State of Florida in 2006. Id. at 2-3.

The 2006 Florida Statutes provided that "all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the limited liability company and the conduct of its business" Fla. Stat. § 608.423(1) (2006). However, "[a] promise by a member to contribute to the limited liability company is not enforceable unless it is set out in writing signed by the member." Id. § 608.4211(2). Additionally, "the members, managers, and managing members of a limited liability company are not liable, solely by reason of being a member or serving as a manager or managing member . . . for a debt, obligation, or liability of the limited liability company." Id. § 608.4227(1).

Based on the findings of fact explained in this Court's Order of Judgment, this Court found that the agreement between the parties regarding the business operations of 2624 Myrtle, LLC, and 2802 Middle, LLC did not include one in which Rhodes or Rhodes Investments would contribute to losses sustained by Haskin. Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (2) To hold that Defendant Rhodes' disclosures to his wife in the Prenuptial Agreement prove that he personally owned a fifty percent capital interest in the companies at issue, that those disclosures are consistent with the tax returns and Schedule k-1s and that Rhodes, being the owner of an undiluted fifty percent capital interest in the companies, is liable for his fifty percent share of the losses as well as the profits of those entities.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (3) To rule on and to make findings of fact and conclusions of law as to whether or not a partnership existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and hold that the Haskin-Rhodes partnership exists.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (4) To hold that the evidence proves that a partnership existed between Haskin and Rhodes in which they agreed, orally and/or through a course of dealing, to share profits and losses equally.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (5) To hold that the Operating Agreements for 2624 Bayonne, LLC, 2624 Myrtle, LLC, 2802 Middle, LLC and Station 22 of Charleston, LLC were not followed by the parties but were, in fact, disregarded as proven by the evidence.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (6) To hold that the evidence of course of dealing and acquiescence between Haskin and Rhodes proves that Haskin and Rhodes had an agreement to share profits and losses equally and that Rhodes breached that agreement.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (7) To correct erroneous factual findings and errors of law involving Plaintiff's action for an Accounting and to hold that Plaintiff is entitled to the amount of the disparity between the partner's capital accounts as determined by Plaintiff's expert.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (8) To hold that Plaintiff is entitled to the remedy of unjust enrichment/Quantum Meruit/Restitution as an alternative to a finding of breach of contract.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).



- (9) To hold that a fiduciary duty existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and that Rhodes breached his fiduciary duty to Haskin.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (10) To hold that Plaintiff is entitled to the remedy of equitable contribution.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (11) To hold that the remedy of piercing the corporate veil of Rhodes Investments, Inc. is warranted in this case.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (12) To correct erroneous factual findings and errors of law involving Plaintiff's action to set aside a fraudulent conveyance and/or impose a constructive trust or attachment of proceeds and real property.

GRANTED IN PART.

This Court's Order of Judgment incorrectly placed the burden of proof on the plaintiff in this case involving a real property conveyance between two of the defendants, husband and wife, Samuel Rhodes and Tracey Bozzelli, respectfully. Order of Judgment Haskin v. Rhodes at 11-12, (2012-CP-10-6506). This Court strikes the entire section of its Order of Judgment entitled "(Fraudulent Action to Set Aside Conveyance Intended to Defraud Creditors)," and replaces as follows. Id.

"The Statute of Elizabeth 'does not limit its application to judgment creditors. Its protection also extends to other types of parties *defrauded* in connection with the conveyance of property.'" Judy v. Judy, 403 S.C. 203, 208; 742 S.E.2d 672, 675 (Ct. App. 2013) (emphasis added) (quoting Mathis v. Burton, 319 S.C. 261, 264; 460 S.E.2d



406, 408 (Ct. App. 1995)). This Court finds that based on the findings of fact and conclusions of law herein and in this Court's Order of Judgment, the defendants were not and are not indebted to the plaintiff Haskin for losses, contributions, or the sale of 1723 Middle Street. As such, Haskin, is not a judgment creditor of the defendants, nor has Haskin been defrauded by the conveyance of property between the defendants. Therefore, the Statute of Elizabeth is inapplicable.

(13) To hold that Defendants are not entitled to an award of costs.

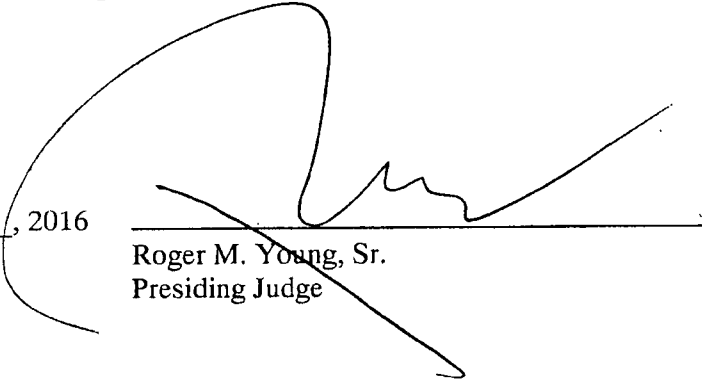
DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

CONCLUSION

This Court having considered the arguments, supporting documents, and based on same, this Order Amends this Court's Order of Judgment filed with the Charleston County Clerk of Courts on February 5, 2016.

AND IT IS SO ORDERED.

This _____ day of 4/28, 2016
Charleston, South Carolina



Roger M. Young, Sr.
Presiding Judge