

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

RECEIVED
 IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-10-6506
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 SC Court of Appeals
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 JUDGE J. ARMSTRONG
 CLERK OF COURT

ORDER OF JUDGMENT

Presiding Judge: Roger M. Young
 Plaintiff's Attorney: John E. Rosen and Richard S. Rosen
 Defendants' Attorney: Frank M. Cisa
 Date of Trial: November 16, 17, 18 and 19, 2015

The above 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. This case was originally on the jury trial roster, but the parties agreed that since several of the causes of actions asserted by the Plaintiff were to be decided by the Court, the entire case would be tried non jury.

The Plaintiff, William B. Haskin, Jr. ("Haskin") was represented by Richard S. Rosen and John E. Rosen and the Defendants, Samuel W. Rhodes, Jr. ("Rhodes"), Rhodes Investments, Inc. ("Rhodes Investment"), Rhodes Consulting, LLC ("Rhodes Consulting"); and Tracey M. Bozzelli ("Bozzelli") were represented by Frank M. Cisa.

BACKGROUND

Haskin and Rhodes had been friends since meeting in college in 1982. Over the past twenty (20) or so years, Haskin and Rhodes formed various limited liability companies with each

LLC acquiring an unimproved lot. They would then construct a house on the subject property for sale to a third party. The arrangement was profitable until the down turn in the economy in the latter part of 2007.

This dispute involves four (4) of the limited liability companies: 2624 Myrtle, LLC (2624 Myrtle); 2802 Middle Street, LLC (2802 Middle); Station 22 of Charleston, LLC (Station 22); and 1723 Middle Street-HR, LLC f/k/a 1723 Middle Street, LLC (1723 Middle).

The Plaintiff sued the Defendants for Breach of Contract, Unjust Enrichment/Quantum Meriut, Judicial Dissolution as to Station 22, Contribution, Piercing the Corporation Veil, Constructive Trust, Accounting, and an action to Set Aside a Fraudulent Conveyance from Rhodes to Bozzelli relative to 1723 Middle.

FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this court makes the following facts:

1. At all times relevant to this action, Haskin was employed full time in the business of importing lumber products and distributing them for sale.
2. At all times relevant to this action, Rhodes was primarily engaged in the business of constructing single family homes.
3. 2624 Myrtle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2624 Myrtle at all times had been Haskin and Rhodes Investments. 2624 Myrtle was formed for the specific purpose of acquiring a lot located at 2624 Myrtle Avenue on Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.



4. 2802 Middle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2802 Middle are Haskin and Rhodes Investments. 2802 Middle was formed for the specific purpose of acquiring a lot located at 2802 Middle Street, Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.
5. Station 22 is a limited liability company, organized under the laws of the State of South Carolina in 2004. The members of Station 22 are Haskin, Rhodes Investments and Covington Property, Inc. Station 22 was formed for the specific purpose of acquiring a lot located at 22 Lafar Street, Daniel Island, South Carolina and building a home on the subject property to be sold to a third party.
6. 1723 Middle is a limited liability company organized under the laws of the State of Florida in 2007. Members of 1723 Middle were Haskin and Rhodes Investments. 1723 Middle was formed for the specific purpose of acquiring a lot located at 1723 Middle Street on Sullivan's Island, South Carolina and building a home on the subject property to be sold to a third party.
7. The structure of each project undertaken by 2624 Myrtle, 2802 Middle, 1723 Middle are virtually the same. Haskin secured the necessary financing to purchase the various lots, obtained a construction loan, and funded any shortfall during construction. Rhodes Investments' duties through the efforts of Rhodes were to construct and manage the projects on a day to day basis, hire all subcontractors, oversee the work, and pay all subcontractors. A separate checking account was opened for each of the limited liability companies into which money would be deposited and disbursed. Cancelled checks would be sent to Debbie



Eures, a bookkeeper for the companies. On the projects that were profitable, Haskin would first be reimbursed for the costs advanced and then the profits would be split equally between Haskin and Rhodes Investments.

8. The structure of Station 22 was also the same except, Covington Property, Inc., and Haskin obtained the construction loan and funded any shortfall during construction. Rhodes Investments through Rhodes constructed and managed the property on a day to day basis and hired and paid all subcontractors.
9. 2802 Middle, 2624 Myrtle and Station 22 did not make a profit. Due to the downturn in the economy, the properties owned by these three entities were either lost to foreclosure or lost money due to a short sale.
10. Between 2006 and 2011, Haskin made capital contributions to 2802 Middle Street of \$822,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2011, Haskin made capital contributions to 2624 Myrtle totaling \$470,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2010, Haskin made capital contributions to Station 22 in the amount of \$131,440.00 which he claimed as losses on his individual tax returns.
11. Between 2007 and 2010, Rhodes Investments made capital contributions to 2624 Myrtle in the amount of \$37,173.00 which Rhodes claimed as losses on his individual tax returns. Between 2007 and 2011, Rhodes Investments contributed capital to 2802 Middle Street in the amount of \$14,277.00 which Rhodes claimed as losses on his individual tax returns. Rhodes Investments did not make any capital contributions to Station 22. Capital contributions made by Rhodes

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Investments to 2624 Myrtle and 2802 Middle were made at times when Haskins was out of town and not available to make contributions.

12. No signed Operating Agreements appear to exist for the various limited liability companies formed by Haskin and Rhodes Investments, with the exception of 2624 Bayonne, LLC. The Operating Agreement for 2624 Bayonne, LLC provides in article 3.2 that "No member shall be required to contribute additional capital to the Company." Article 6.3 provides that "Each Member shall look solely to the assets of the Company for the return of the Member's capital contribution, and if the Company's property remaining after payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of each Member, a Member shall have no recourse against any other Member(s)."
13. Unsigned Operating Agreements that mirror the signed Operating Agreement of 2624 Bayonne, LLC do exist for 2624 Myrtle and 2802 Middle. Both unsigned Operating Agreements contain the same language concerning capital contributions. The evidence shows these Operating Agreements were not signed because the bank financing which required signed agreements before closing was not used. Instead, Haskin financed these two projects drawing on an existing credit line on his primary residence.
14. An unsigned Operating Agreement also exists for Station 22. Rhodes Investments would not sign the Operating Agreement as it contained a provision for mandatory capital contributions. Rhodes Investments and Rhodes would also not sign on the construction loan that was obtained by Station 22 for the construction of the home at 22 Lafar Street.

15. All of the tax returns for 2802 Middle and 2624 Myrtle reflect that Haskin and Rhodes Investments were allocated losses based upon their respective capital contributions. Likewise, the tax returns for Station 22 reflect that losses were allocated based upon the capital contributions made by Haskin, Covington Property, Inc. and Rhodes Investments. All of the tax returns were signed by Haskin on behalf of the companies.
16. Neither Rhodes Investments or Rhodes ever agreed with Haskins to contribute towards losses. The first time that Haskins took the position that Rhodes Investments or Rhodes owed him for half of his losses on 2802 Middle, 2624 Myrtle and Station 22 was on November 3, 2011, as shown by the email from Haskin to Rhodes. Haskin, however, had sustained losses on 2802 Middle Street every year between 2006 and 2011; sustained losses for 2624 Myrtle each year between 2007 and 2011; and sustained losses for Station 22 for each year between 2007 and 2010.
17. Rhodes Investments contribution of capital was in the form of services performed through the effort of Rhodes in constructing various homes for the limited liability companies. Rhodes Investments and Rhodes were not paid any money to construct the homes. The evidence shows that a contractor typically charged twenty (20%) percent of the costs of construction of homes at the time the subject residences were constructed. Twenty (20%) percent of the cost of construction for projects done for 2624 Myrtle, 2802 Middle, and Station 22 totals approximately \$692,000.00. Haskin lost the money he invested in these projects and Rhodes Investments and Rhodes lost their time and effort in constructing the

residences over a period of twelve (12) to eighteen (18) months. Haskin was the investor and Rhodes Investments performed the work through the efforts of Rhodes.

18. Bozzelli is the Wife of Rhodes. Bozzelli had no involvement in the formation or operation of any of the limited liability companies formed by Haskin and Rhodes Investments.
19. The property owned by 1723 Middle was on the market for sale in 2008; however, it did not sell. As a result, Rhodes entered into an agreement to purchase 1723 Middle Street from 1723 Middle for the sum of \$2,157,900.00. The closing of the purchase occurred on September 12, 2008. At the time of the closing, the existing debt guaranteed by Haskin was paid. Rhodes and Bozzelli then moved into 1723 Middle Street, but continued to try and sell the residence. By deed dated March 30, 2009, Rhodes conveyed 1723 Middle Street to he and Bozzelli as joint tenants with rights of survivorship. Rhodes deeded the property pursuant to advice he had received relative to estate planning. On February 1, 2010 Rhodes then conveyed all of his interest in 1723 Middle Street to Bozzelli. Rhodes deeded his remaining interest in 1723 Middle Street to his wife as he could no longer afford to pay the mortgage on the residence and Bozzelli was not agreeable to making the payments unless the property was in her name. 1723 Middle Street was ultimately sold to a third party on December 9, 2011 with Bozzelli netting \$64,891.94 at closing. Bozzelli had, however, made contributions towards the mortgage and other expenses associated with 1723



Middle Street in the amount of approximately \$127,000.00. Rhodes and Bozzelli sustained a loss of \$520,575.00 relative to the sale of 1723 Middle Street.

20. After 1723 Middle Street was sold, Bozzelli then purchased a lot at 3029 Middle Street and obtained a construction loan for a house. The lot at 3029 Middle Street and the construction of the house were paid for solely by Bozzelli by using her liquid assets and obtaining loans. Neither Rhodes Investments or Rhodes contributed money for the acquisition or construction of 3029 Middle Street.
21. Rhodes Investments did not need capital to operate. All of the projects were funded by Haskin. Rhodes Investments always filed tax returns and reported any income received through the limited liability companies set up by Haskin and Rhodes Investments. Rhodes Investments had a checking account.
22. Haskin's contention that Rhodes agreed to pay him \$75,000.00 incident to the conveyance of 1723 Middle Street to Rhodes by 1723 Middle Street, LLC is not supported by the Agreement to Buy and Sell. Rhodes paid the purchase price referred to in the Agreement to Buy and Sell at closing.

CONCLUSIONS OF LAW

(Breach of Contract/Oral Operating Agreements)

Haskin has failed to prove by a preponderance of the evidence that the Defendants breached an agreement to contribute to losses sustained by Haskin relative to 2624 Myrtle, 2802 Middle, and Station 22. It is clear from the record that the only Defendant that was a Member of these limited liability companies was Rhodes Investments. Tax returns signed by Haskin for the various companies as well as the Operating Agreement show that Rhodes Investments was the Member.



The course of dealings between the parties does not support Haskin's contention that either Rhodes Investments or Rhodes agreed to contribute to Haskin's losses. Haskin acknowledged that he was the investor and that Rhodes Investments provided services for the construction of the various houses. Although Haskin sustained losses for a number of years relative to the three limited liability companies, he made no demand on Rhodes to contribute to losses until November of 2011.

The tax returns for the three (3) limited liability companies show that members of the companies were allocated losses based upon their capital contributions. The individual tax returns of Haskin also show that he claimed the losses on his returns. Jim Covington, owner of Covington Investments, Inc., also confirmed that there was no oral agreement concerning losses relative to Station 22 and that Rhodes refused to sign for the construction loan for the project. The services provided by Rhodes Investments and Rhodes were substantial and of very real value. The value of the construction services provided was approximately \$692,000.00. Both Rhodes and Haskin acknowledged that the projects took between 12 to 18 months to construct. They also agreed that neither Rhodes Investments, nor Rhodes received any compensation for the services provided.

(Unjust Enrichment /Quantum Merit)

Haskin has failed to prove by a preponderance of the evidence that any of the Defendants have been unjustly enriched by him. Haskin performed his obligation to acquire financing for the projects and maintain the shortfalls during construction; however, Rhodes Investments and Rhodes provided substantial services relative to the construction of the homes. Rhodes Investments and Rhodes did not receive a benefit relative to the construction of the homes for



2802 Middle, 2624 Myrtle and Station 22. Rather, Rhodes Investments and Rhodes lost time and effort just as Haskin lost his investment.

Haskin has failed to prove by a preponderance of the evidence that Rhodes breached an agreement to pay him \$75,000.00. Haskin has also failed to prove that the conveyance of 1723 Middle Street to Rhodes conferred a benefit to Rhodes. In fact, Rhodes and Bozzelli sustained a loss on the sale of 1723 Middle Street in the amount of \$520,575.00.

(Judicial Dissolution as to Station 22)

At the time that Haskin filed his Amended Complaint he sought the judicial dissolution of Station 22. At the time of trial, the evidence shows that the only asset of Station 22, being the residence at 22 Lafar, had been lost to foreclosure. As a result, there is no asset left to liquidate.

(Contribution)

Haskins has failed to prove by a preponderance of the evidence that any of the Defendants agreed to or were required to contribute capital to fund the limited liability companies' losses.

(Piercing the Corporate Veil)

The Court has determined that the Defendants are not liable to the Plaintiff and therefore the issues concerning piercing the corporate veil are rendered moot.

(Constructive Trust)

"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." Lollis vs. Lollis, 291 S.C. 525, P.529; 364, S.E2d, 559, P. 561. Haskin has failed to prove by a preponderance of the evidence that any of the Defendants have engaged in fraud, bad faith, abuse of confidence or violated a fiduciary

duty. In fact, there is no evidence that either Rhodes Investments or Rhodes improperly used the money advanced by Haskin for the construction of the projects.

(Accounting)

Haskin seeks an Accounting relative to 2624 Myrtle, 2802 Middle and Station 22. The evidence presented shows, however, that an accounting has been done for each of these entities and that none of the entities currently own any assets.

(Fraudulent Action to Set Aside Conveyance Intended to Defraud Creditors)

In interpreting the Statute of Elizabeth, "this Court has held conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration." Oskin v. Johnson, 400 S.C. 390, P. 397; 735, SE2d 459, P.463.

"A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." Oskin v. Johnson, 396; 463.

There is no evidence in the record of the value of 1723 Middle Street when Rhodes conveyed a one-half (1/2) interest to Bozzelli or when Rhodes conveyed his remaining interest to Bozzelli. Rhodes first conveyed a half interest to Bozzelli upon advice concerning estate planning. Rhodes then conveyed his remaining half interest to Bozzelli as Bozzelli agreed to pay the mortgage and other expenses related to 1723 Middle Street. The home at 1723 Middle Street was sold at a loss of \$520,575.00.

Haskin has failed to prove by clear and convincing evidence that Rhodes fraudulently conveyed his interest in 1723 Middle Street to Bozzelli.

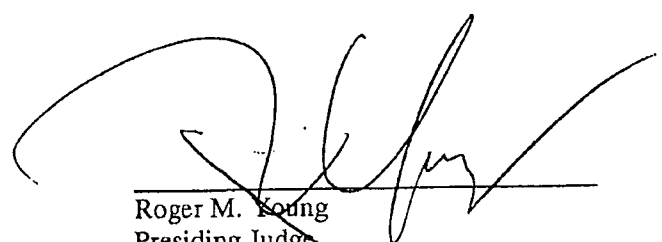
Since the Court denies any relief to the Plaintiff relative to his fraudulent conveyance claim, Haskin's claim against Bozzelli for the value of 3029 Middle Street is also denied.

THEREFORE, It is Ordered, Adjudged and Decreed;

1. That the Plaintiff, William B. Haskin, Jr.'s Complaint is hereby dismissed with costs awarded to the Defendants; and
2. That the Clerk of Court is hereby directed to cancel the Lis Pendens filed by the Plaintiff on November 8, 2013 against the property owned by Tracey M. Bozzelli located at 3029 Middle Street, known as lot 9, Block 12, Marshall Reservation.

AND IT IS SO ORDERED!

This ¹⁴ day of February, 2016
Anderson, S.C.



Roger M. Young
Presiding Judge
Ninth Judicial Circuit