

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2014 CP-10-2884

RECEIVED

Blaylock 2016 MAY -5 PM 3:25

LaMarche JUN 09 2016

JULIE J. ARMSTRONG
CLERK OF COURT

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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: This matter comes before the court by way of a Motion to Reconsider filed by Intervening Defendant David Chung. The court respectfully denies the Motion to Reconsider for the reasons stated in the Order of the court dated February 12, 2016. Further, Petitioner's reliance on Goodwin v. Landquest is misplaced. See Robinson v. J.F. Cleckley Co., 751 F. Supp. 100 (D.S.C. 1990) cited therein.

Also, filing of a Lis Pendens puts creditors on notice to search for 5 years therefore Arkansas had notice of the judgment

This order ends does not end the case.


Additional Information for the Clerk :

MPB

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.

Circuit Court Judge



3062

Judge Code

5/3/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-2884

RECEIVED

Darryl M. Blaylock)
)
Plaintiff,)

JUN 09 2016

vs.)

SC Court of Appeals
ORDER DENYING DAVID CHUNG'S
MOTION TO INTERVENE AND TO
SET ASIDE PARTITION JUDGMENT

Erica Lynn LaMarche,)
)
Defendant.)

and)

David S. Chung,)
)
Intervening Defendant.)

FILED
2016 FEB 12 - PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER is before the court on David Chung's ("Chung") Motion pursuant to SCRCP 60(b)(3) seeking to intervene in this action and set aside a judgment of partition of a home owned by plaintiff Darryl Blaylock ("Blaylock") and defendant Erica Lynn LaMarche ("LaMarche"). Chung asserts he should have been made a party to the original action because of a District of Columbia judgment filed in South Carolina. Although Chung's judgment has merit, Defendant filed a Lis Pendens in accordance with S.C. Code Ann. § 15-11-10 prior to both domestication of the judgment and the filing of this Motion, therefore any subsequent claims to the property are barred. Therefore, Defendants Motion is denied.

FACTS

On September 28, 2005, Blaylock and LaMarche purchased a single-family home located at 1309 Langford Drive, Mount Pleasant, South Carolina. Blaylock and LaMarche purchased the real property in cash and owned the property debt free as joint tenants. In 2007, Blaylock and



LaMarche took out a mortgage on the Langford property and borrowed \$400,000.00.

In February of 2012, Blaylock brought the current action against LaMarche for conversion of personal property and LaMarche counterclaimed for partition of the Langford property. On September 26, 2012 LaMarche filed a notice of Lis Pendens and the action was stricken by consent of both parties pursuant to SCRCP 40(j) on February 5, 2013, then reinstated pursuant to SCRCP 40(j) on May 6, 2014. The Court declared, by final order, on December 3, 2014, that Blaylock did have \$100,000.00 worth of equity in the Langford property subject to an \$80,000.00 mortgage. In accordance with the final order, LaMarche paid Blaylock \$20,639.57 to purchase his remaining equity in the Langford property and a Quiet Title Deed was issued on January 23, 2015. The Langford property was then sold on September 12, 2015, for \$605,000.00 to a third party.

Chung's assertion of an interest in the Langford property arises from a District of Columbia lawsuit against Blaylock in which he was found liable on February 26, 2013 of fraud, unjust enrichment, and fraudulent conveyance. The District of Columbia action was filed in 2008 alleging Blaylock, through his agent, induced Chung into investing \$100,000.00 for renovations on a coffee shop. The loan required Blaylock to pay back the principal plus 100 % interest on the loan.

Blaylock subsequently did no renovations to the coffee shop and, unbeknownst to Chung and LaMarche, transferred the funds to LaMarche to make payments toward the mortgage on the Langford property. The District of Columbia jury awarded Chung \$100,000 in actual damages and \$100,000 in punitive damages. Chung's principal debt was satisfied by a settlement agreement with Blaylock's agent and the current claim against Blaylock and LaMarche is for the balance due on the judgment with interest. Chung domesticated his judgment on November 4,



2014, in South Carolina eight months after judgment was entered in the District of Columbia matter.

Chung filed a Motion to Intervene and Set Aside the Judgment in the current action on September 11, 2015, to have the court create a constructive trust of the proceeds from the sale of the real property.

LAW/ANLYSIS

Chung's Motion to Intervene and Set Aside the Judgment is procedurally deficient because LaMarche filed notice of Lis Pendens prior to Chung domesticating the District of Columbia judgment. A properly filed notice of Lis Pendens binds subsequent purchasers or encumbrancers to all proceedings emanating from the litigation. S.C. Code Ann. § 15-11-20 (1976); S.C. Code Ann. § 15-11-50 (1976) (When the summons is published or served as above provided, the notice of the pendency of the action shall constitute notice for five years from the date of the filing); *Pipkin v. Fletcher*, 165 S.C. 98, 162 S.E. 774 (1932); *S. Carolina Nat. Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987). The Lis Pendens mechanism is designed primarily to protect unidentified third parties by alerting prospective encumbrancers and purchasers of property as to what is already on public record, "i.e., the fact of a suit involving property;" therefore, it notifies potential encumbrancers and purchasers that they will take subject to the judgment, without any substantive rights. *Horry Cty. v. Ray*, 382 S.C. 76, 81, 674 S.E.2d 519, 522 (Ct. App. 2009).

In this matter, LaMarche filed notice of Lis Pendens in regard to the real property on September 26, 2012, in a counterclaim against Blaylock. Chung was awarded his District of Columbia judgment February 26, 2013 and waited eight months until November 4, 2013, to domesticate his judgment in South Carolina. Chung filed his Motion to Intervene and Set Aside



the Judgment pursuant to SCRCP 24(a)(2) and SCRCP 60(b)(3) on September 11, 2015, three years after notice of Lis Pendens was filed on the Langford property. In this Court, Equity aids the vigilant; Chung had ample time to discover Lis Pendens was filed on the property and seek other property to satisfy his District of Columbia judgment. Here, Equity will not aid Chung because he sat on his rights for a substantial period of time after proper notice had been provided with a properly filed notice of Lis Pendens.

I. SCRCP 24(a)(2)

Chung's Motion to Intervene is untimely pursuant to statute because LaMarche filed notice of Lis Pendens. SCRCP 24(a)(2) reads as follows:

Upon timely application, anyone shall be permitted to intervene in an action when the applicant claims an interest relation to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represent by existing parties.

A party seeking intervention under SCRCP 24(a)(2) must:

1. establish timely application;
2. assert an interest relation to the property or transaction which is subject of the action;
3. demonstrate, that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and
4. demonstrate that its interest is inadequately represented by other parties.

In re Horry Cty. State Bank, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). Failure to satisfy any one of the four requirements precludes intervention. *Ex parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

In this matter, Chung fails the first requirement by not establishing timely application of the motion. Chung, despite his domesticated judgment, did not appear in this action until the real property in question had been sold to a third party who was a bona fide purchaser for value.

Accordingly, the Court finds Chung's failure to establish timely application pursuant to SCRCP 24(a)(2) results in denial of the relief sought herein.

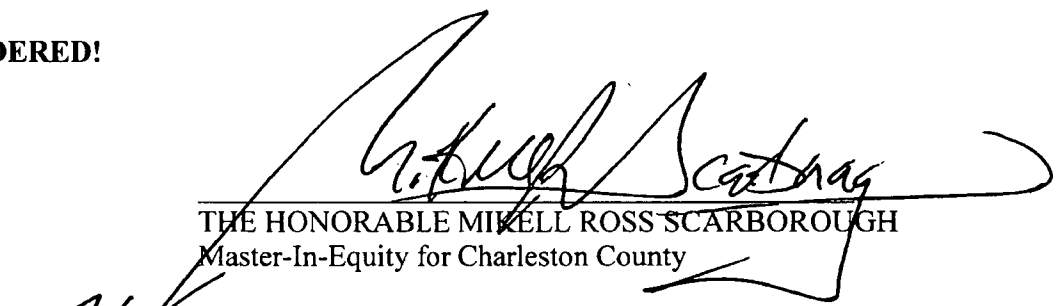
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II. SCRPC 60(b)(3)

Finally, SCRPC 60(b)(3) can be used to set aside a judgment in cases of extrinsic fraud, however this case does not present such circumstance. Extrinsic fraud induces a person not to present a case or deprives a person of the opportunity to be heard. *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010). If a judgment procured by extrinsic fraud could have been avoided if the challenging party exercised due diligence, a court generally will not grant relief. *Id.* As previously stated, Chung did exercise due diligence in domesticating his judgment here in South Carolina. Furthermore, Chung has not presented evidence to indicate that he was fraudulently excluded from the proceedings, notwithstanding the notice of Lis Pendens filed by LaMarche, he does not have an interest in the real property because LaMarche had no direct knowledge of the fraud Blaylock perpetrated in the District of Columbia matter.

THEREFORE IT IS ORDERED that David Chung's Motion to Intervene and Set Aside the Judgment is denied.

AND IT IS SO ORDERED!


THE HONORABLE MIKELL ROSS SCARBOROUGH
Master-In-Equity for Charleston County

This 11 day of February, 2016
Charleston, South Carolina