

STATE OF SOUTH CAROLINA,  
COUNTY OF CHARLESTON

LAMAR HOSEY

Plaintiff,

vs.

CHONA MITCHELL, TIMOTHY  
MITCHELL

Defendant(s).

IN THE COURT OF THE MASTER IN EQUITY  
NINTH JUDICIAL CIRCUIT  
FILE NO. 2014-CP-10-4208

**FINAL ORDER**

**RECEIVED**

AUG 22 2016

SC Court of Appeals

DATE OF HEARING:  
TRIAL JUDGE:  
PLAINTIFF'S ATTORNEY:  
DEFENDANT CHONA MITCHELL:  
DEFENDANT TIMOTHY MITCHELL:  
COURT REPORTER:

SEPTEMBER 29, 2015  
MIKELL R. SCARBOROUGH  
DONNA MCQUEEN  
PRO SE  
PRO SE  
CHRISTINE SMITH

FILED  
2016 MAR -4 PM 4:31  
JULIE A. ARMSTRONG  
CLERK OF COURT

This matter came before the Master in Equity on September 29, 2015. Plaintiff filed a Summons and Verified Complaint on July 3, 2014. Neither Defendants Chona Mitchell nor Timothy Mitchell filed an Answer or Counterclaim. Plaintiff filed an Affidavit of Default on September 5, 2014 in the Court of Common Pleas where the matter was pending, however, no Order of Default was entered. For good cause shown, Defendants were allowed out of default and testified at trial. Rule 55, SCRPC.

Present at the hearing was the Plaintiff, Lamar Hosey (hereafter "Hosey"), and his counsel Donna McQueen. Defendants Chona Mitchell (hereafter "Chona") and Timothy Mitchell (hereafter "Timothy") were present and self-represented.

**FINDINGS OF FACT**

1. There are three parcels of real estate at issue in this case. The first two are located at 2018 and 2020 Riverview Avenue (hereafter "Riverview") and are vacant lots. The third property is located at 2638 Lilac (hereafter "Lilac") which is a single family home where Defendant Chona Mitchell resides with her children.

2. The Riverview properties were transferred to Plaintiff Hosey by Chona's mother, Dorothy Mitchell, "in consideration of the sum of five dollars and love and affection for her future son-in-law," in a deed dated July 24, 1994.
3. The Lilac house was transferred to Hosey on December 8, 2003 by his brother Robert Hosey.
4. During the course of their thirteen (13) year relationship, Hosey and Chona Mitchell were never married; however, they had three children. It is undisputed that Hosey never paid any child support to Chona for support of his three children.
5. Hosey gave Chona authority as his Power of Attorney (hereafter "POA") on December 5, 1996, for purposes of managing the properties while Plaintiff was incarcerated.
6. In 2010, while Hosey was incarcerated for a second time, he was unable to pay the taxes. Hosey agreed to allow Chona to rent out the Lilac property because he was unable to provide financial support for Chona and her children.
7. Plaintiff, during this period of incarceration, was unable to maintain and keep up with the expenses of the properties. He told Chona, "Do what you have to do...[to maintain the properties]".
8. Additional expenses, for repairs for damage done to the property by the tenants, caused Chona to have financial problems maintaining the properties. She turned to Timothy for help.
9. When the Lilac property was at risk of being lost at tax sale, Chona asked her brother Timothy to pay for the repairs to fix the issues with the Lilac property and to pay the taxes.
10. Chona, pursuant to the POA, thereafter transferred title to all three properties to Timothy in return for supporting her family and saving the Lilac property from being sold at the 2011 tax sale.
11. Chona transferred these properties to Timothy on July 13, 2011.
12. Plaintiff filed a Revocation of the POA on August 31, 2011.
13. Later, in July 2014, while Timothy continued to pay for maintenance and taxes on the properties, Plaintiff brought this action to seek return of the properties to him.

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## CONCLUSIONS OF LAW

- I. **Chona Mitchell did not breach her duties as Attorney in Fact because Lamar Hosey did not formally revoke the Power of Attorney until after the transfer of the properties and the Power of Attorney ratified her actions as a matter of law.**

A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. In re Thames, 344 S.C. 564, 544 S.E.2d 854 (S.C. Ct. App. 2001).

There is no dispute that Hosey gave Chona a valid and properly executed POA in 1996 before he was first incarcerated. Plaintiff claims he revoked this POA by physically tearing it up. However, the POA was properly recorded at the Charleston County RMC Office and therefore was a valid expression of his intent to transfer authority of his legal affairs to Chona. While Hosey was incarcerated for a second time, his actions indicate that he still relied on Chona to execute his affairs pursuant to the POA. Chona utilized her power as Attorney-in-Fact to rent the Lilac property as Section 8 housing to provide income to support herself and her three children fathered from Hosey.

Chona, or her brother at her request, performed all the responsibilities of maintenance and upkeep of the properties, as well as payment of the property taxes, while Plaintiff was away. All actions taken were legally authorized pursuant to the recorded POA. The POA, by its express terms, confirmed all acts undertaken by the agent (Chona) and were ratified as the actions of the principal, Hosey.

Chona conveyed the property to Timothy on July 13, 2011 after she was financially unable to maintain the properties. I find that Plaintiff never revoked the POA until it was formally revoked in August of 2011 - by then the properties had been legally transferred to the person who asserted ownership and responsibility for the upkeep and maintenance of the property.

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**II. The Riverside properties are to be transferred to Plaintiff Lamar Hosey and the Lilac property is to remain in Defendant Timothy Mitchell's name because it conforms to the equitable maxims of this Court.**

Equitable maxims are not binding legal doctrines, but have evolved over time from prior cases to assist a court in applying and balancing equitable considerations. Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, S.E.2d 348 (S.C. Ct. App. 2011). The principle, "equity looks to substance rather than form," evolved out of judicial regard for that which ought to be done. Wilkie v. Phila. Life Ins. Co., 187 S.C. 382, 197 S.E.2d 375. When applying this principle, courts look to the substance and intent of the parties, to give a construction consistent with such intent. Regions Bank.

Although the Defendant Timothy Mitchell was not related to Hosey by blood or lawful marriage, according to the testimony of Chona (which I find more credible) Plaintiff and Chona held themselves out as married and had three children together over a thirteen year period from 1991 to 2004. Further, the deed for the Riverside properties was given from Chona's mother, Dorothy Mitchell, to Hosey as her "future son-in-law." Additionally, Hosey had a legal duty to provide and care for Chona and his three children even while he was incarcerated. This provides the legal obligation for why the Lilac property was rented in order to produce an income stream to support Chona and Hosey's children. See Jocoy v. Jocoy, 349 SC 441, 562 SE2d 674 (Ct. App. 1992).

If not for the actions of Timothy Mitchell, the evidence establishes that the Lilac property would have been lost for non-payment of taxes. Therefore, I find that Chona's transfer of title to the Lilac property was a proper transfer to her brother for his efforts in saving this asset from forfeiture. I find this occurred because Plaintiff, by his statement (Facts ¶7) and actions, abandoned his interest in the Lilac property. Witt v. Poole, 182 SC 110, 188 SE 496 (1936). But for the actions of Timothy - to pay for and maintain the assets to which Chona had been given legal authority - since Hosey failed to



maintain the properties while incarcerated, there would be no asset for these parties to dispute. I conclude, in the interest of equity, the Lilac property should remain deeded to Timothy Mitchell.

However, the record does not convince me that the Riverside properties were under threat of being lost as they were unimproved lots and the tax payments thereon were negligible. I conclude, in the interest of equity, the Riverside properties should be transferred to Plaintiff Lamar Hosey.

**THEREFORE, IT IS HEREBY ORDERED** that this Court has subject-matter jurisdiction to hear and determine this legal dispute.

**IT IS FURTHER ORDERED** that title to the Lilac property shall remain in the name of Defendant Timothy Mitchell subject to all property taxes being paid by Timothy; and

**IT IS FURTHER ORDERED** that title to the Riverside properties shall be transferred from Defendant Timothy Mitchell to Plaintiff Lamar Hosey subject to all property taxes being paid by Plaintiff; and

**IT IS FURTHER ORDERED** that each party is responsible for their own attorney's fees and costs associated with this action including the transfer of the properties as ordered herein.

**AND IT IS SO ORDERED!**

Charleston, South Carolina  
March 9, 2016



Honorable Mikell R. Scarborough  
Master-in-Equity for Charleston County