

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2016-001227
Circuit Case No. 2014-CP-10-2884

RECEIVED
JAN 23 2017
SC Court of Appeals

Darryl M. Blaylock,

Respondent,

versus

Erica Lynn LaMarche,

Respondent,

and

David S. Chung,

Proposed Intervenor, Appellant.

PROPOSED INTERVENOR'S INITIAL REPLY BRIEF

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ARGUMENTS

1. Erica LaMarche was a participant in the scheme to harm David Chung and if she was ignorant its only because of her willful blindness.

In her brief, LaMarche asserts she is, “dissociated” with this matter and that Chung, “had no prior interest in Langford property.” Both statements are factually inaccurate because LaMarche has admitted being the conduit between the money stolen from Chung and the payment down of the debt on the Langford property. Blaylock testified that when he received Chung’s \$100,000 from Egle, he used all of it to pay down the mortgage he and LaMarche placed on the Langford Road house:

- Q: You got \$100,000 that came from David Chung.
A: And I got that money that came from Ryan Egle.
Q: And you testified that you used that money to pay off the home equity loan?
A: Yes.

Depo. of Darryl Blaylock, October 5, 2011, p. 432, ln. 6-15.

LaMarche was also deposed in the District of Columbia action. She testified that she also knew Egle had given Blaylock \$100,000 and that those funds were used to pay down the mortgage on the home. Depo. of LaMarche, p. 85, ln. 1-8. In fact, LaMarche testified that she was the one that paid down the mortgage: “... I was responsible for paying down the mortgage because [Blaylock] has proven himself to be irresponsible with money,” *Id.* p. 85, ln.12-21. She also testified that she knew Egle’s funds were taken from Chung. *Id.* p. 86, 87, 91, 92, *passim.*

When specifically asked whether she knew where Egle-- who she characterized as a drug addict—got the funds to pay her, LaMarche danced around answering pointedly, but made clear the circumstances were suspicious:

Q: Did you -- when you received the 100,000 -- I am saying you received it, I mean when Darryl Blaylock received the 100,000 -- you made sure it was applied toward the mortgage, did you ask him, where did Ryan Egle get this from? Did you ask Darryl Blaylock that?

A: Yeah. And I got an, I don't know, maybe his mom, maybe, I don't know, doesn't matter.

Q: Doesn't matter?

A: Not that it doesn't matter, none of my business, pretty much.

Q: Were you -- based on your knowledge of Ryan Egle, were you curious, where did he come up with this kind of money from?

A: Yes. I mean, he has family. Even though he was still getting paid with his real estate company. **I thought it was a little strange, but I also know like they make stuff happen that can't normally happen.** So I don't know....

Depo. of Erica LaMarche, p. 86, ln. 18- p. 87, ln. 11 (emphasis added). If LaMarche did not know the funds had come from Chung it is solely because she closed her eyes to what was happening. LaMarche clearly wanted the debt on the house paid down and she did not care where the funds came from, stolen or not.

Second, LaMarche became associated with the judgment when she forced through a partition action without Blaylock or Chung present on a property that Blaylock jointly held with her. LaMarche, with full knowledge the Chung action

was pending, discontinued the partition action and, when she brought it back without Blaylock's consent, she failed to name Chung in the action, even though his judgment was of record. The fact is that when she pushed the partition through, she had less debt on the house to partition because she personally ensured Chung's stolen funds reduced the debt to which she was jointly and severally liable. LaMarche's claim of being unconnected this matter is only because she did not care to see the thievery in front of her.

2. A case dismissed pursuant Rule 40(j) is a “discontinued” action and a *lis pendens* filed there is notice of nothing.

At the time David Chung filed his District of Columbia judgment in South Carolina, Blaylock and LaMarche had dismissed the partition action pursuant to SCRCRCP Rule 40(j). As the Court of Appeals recently decided, a Rule 40(j) dismissal by which the parties consent to dismiss the case with the right-- but not the obligation-- to restore the case, was a dismissal of the action. *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015) citing *Maxwell v. Genez*, 356 S.C. 617, 620-21, 591 S.E.2d 26, 28 (2003). (“Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored...”)(emphasis in original). The effect of restoring a case dismissed under Rule 40(j) is to put it back where it was; however, while stricken it is not a case. In

fact, if the parties restore the action, the case gets a new case number and is put on the bottom of the general roster. So, while the laws of the case between the parties to the stricken case is restored when the case is, it is, in actuality, a new case.

It is the dismissing and striking of the case that discontinues the action and diminishes and cancels the effectiveness of the *lis pendens*. S.C. Code Ann. §15-11-40(allowing cancellation of a *lis pendens* in a discontinued case). Because the action has been stricken and there is no obligation to restore, the *lis pendens* cannot bind anyone to anything. What was Chung to find? A case that had no formal end? How was he to be brought in to a restored case that he was given no notice was restored? If anything, the 40(j) mechanism runs directly counter to the “subsequent lienholders” element because they cannot be put on notice of what the parties may or may not do.

The filing and preclusive effect of a *lis pendens* is a privilege not a right upon which the filer must strictly comply with the statute and provisions. *Horry County v. Ray*, 382 S.C. 76, 674 S.E.2d 519 (Ct. App. 2009). In many, many ways, using the 40(j) process to dismiss a case, then assert the intermediary filing creditor is bound by the newly filed case, abuses the privilege by allowing parties to play hide-and-seek from creditors. The abuse is most true here where the judgment arises from Blaylock’s fraud and LaMarche’s subsequent unjust enrichment. It is not a giant leap of fairness to declare that parties in property matters which use the Rule 40(j)

mechanism must add intermediary filers to actions or those intermediary filers, like Chung, are not bound.

3. Even if the *lis pendens* was effective, Chung's action of seeking intervention and Rule 60 relief when he did is consistent with the *lis pendens* statute because otherwise the five year element has no meaning.

The Master held that the *lis pendens* barred Chung's right to seek relief because it was valid for five years from the date of filing. This ignores that a *lis pendens* has the effect of making a subsequent filer a party. Chung brought his Rule 60 motion within the one year of the judgment. Because SCRCP Rule 71 requires the plaintiff in a partition action to bring in all parties with a claim, he should have been added when the parties reinstated the claim. In this sense, he never had to ask to intervene, he was already in the case. That a *lis pendens* puts a creditor on notice for five years, expands the ability of a court to provide relief to the disenfranchised creditor such as Chung. Otherwise, creditors are barred from relief because of happenstance, timing, or, as here, fancy use of the rules and the five-year element has no meaning.

Since the relief sought both by LaMarche and Chung is equitable, the requirement for hard compliance with the rules is relaxed. "After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity.... This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud." *Wingard Properties*,

Inc., 394 S.C. at 253, 715 S.E.2d at 355 (Ct. App. 2011). “A *lis pendens* is designed primarily to protect unidentified third parties,” *Horry County v. Ray*, 382 S.C. 76, 674 S.E.2d 519 (Ct. App. 2009). The Master’s holding has the effect of Reliance on a *lis pendens* as a complete bar for relief is improper.

CONCLUSION

LaMarche should have added Chung as a party when she reinstated this action. She benefited from Blaylock’s fraud, even while turning a blind eye to it. She has abused the facts to Chung’s disadvantaged. She has abused the rules to Chung’s disadvantage. She has abused the system to Chung’s disadvantage. Now, she seeks this Court’s aid to carry that track on and it cannot let her do that. For these reasons, the Master’s ruling should be reversed and the action reopened for Chung to be repaid the amount stolen from him and for such other relief as may be just, prudent, and proper.

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2nd day of January, 2017

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PROOF OF SERVICE

I served the forgoing INITIAL REPLY BRIEF on the parties below by placing a copy of the same in the U.S. Mail, postage paid on January 20, 2017.

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January 20, 2017

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SC Court of Appeals

In Re: *Blaylock v. LaMarche v. Chung*
Case No.: 2014-CP-08-1909

Dear Madame Clerk:

Enclosed please find filing with your office, the original and one (1) copy of the Proposed Intervenor's Reply Brief and proof of service of the same. Please file the original and return the copy to me in the enclosed self-addressed stamped envelope provided.

By copy of this letter, I am serving opposing counsel.

Thank you for your time and attention to this matter.

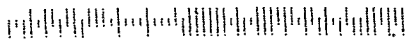
Very truly yours,

A handwritten signature in black ink, appearing to read 'D. K. Haller', is written over the typed name 'David K. Haller'.

David K. Haller

Enclosures

cc: Kristen B. Fehsenfeld
Joseph C. Wilson, IV
Guy Vitetta, Esquire
Darryl Blaylock
Client



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