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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871

Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc., Appellant/Respondent,

v.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators,
Manfred Sprenger and Patricia Sprenger, Respondents-Appellants.

APPELLANTS' INITIAL BRIEF
OF RESPONDENTS/APPELLANTS

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Did the Master err in setting aside transfers from MSPS to Patricia Sprenger?
2. Did the Master err in finding that the challenged transfers were without consideration?
3. Did the Master err in applying the proper standard in analyzing the challenged transfers?

ARGUMENT

I. THE MASTER ERRED IN FINDING TRANSFERS FROM MSPS TO PATRICIA SPRENGER WERE WITHOUT CONSIDERATION.

Standard of Review

A clear and convincing evidentiary standard applies to fraudulent conveyance claims brought under the Statute of Elizabeth. Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). "An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies." Id. Kennedy Funding, Inc. v. Pawleys Island N., LLC (S.C. App., 2015).

Discussion

In this case the Master set aside all transfers from MSPS to Patricia Sprenger that occurred between April 2, 2014 and December 24, 2015. This was based on a finding that these payments were without valuable consideration. The Master's ruling overlooks clear evidence that these payments represented compensation to Manfred Sprenger for his employment at MSPS. The Master's ruling is unsupported by the record and therefore in error.

The Statute of Elizabeth authorizes avoidance of fraudulent transfers. *See* Mathis v. Burton, 319 S.C. 261, 460 S.E.2d 406 (S.C.Ct.App.1995). Fraudulent conveyances can be set aside in two instances: First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be

proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full — not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt. Gentry v. Lanneau, 54 S.C. 514, 32 S.E. 523 (S.C.1899)). In the present case, based on a finding that checks made out to Patricia Sprenger lacked consideration, the court applied the latter analysis. (Order 6). This was clearly erroneous.

The record shows that MSPS was obligated to pay Manfred Sprenger a \$12,000 a month salary as compensation for his work. Def Ex. 14 3/2/16 Benefit Agreement. Mr. Sprenger's compensation initially was about \$12,000 a month, but due to cash flow, that amount was reduced over time to \$8,000 or \$9,000. 19/100; D. Ex. 14. At the time of the first hearing Mr. Sprenger testified that he was receiving about \$7,000 a month salary. 7/7. Mr. Sprenger testified that his compensation was paid by the company through checks made out to his wife Patricia. 8; 9; 16; The testimony of Manfred and Patricia were consistent in that Manfred put her name on the checks to make it for his wife to deposit them in their joint personal account. 21/2nd; Depo PS. 14-18; Depo MS 11. It was customary, even prior to MSPS's involvement with China Construction of America (CCA), for Manfred's salary checks to be made payable to Patricia instead of Manfred. 14 4th; D. Ex. 8; 9. The company records, dating back a year prior to any involvement CCA, showed a pattern of monthly checks in the amount of \$8,000 made out to Patricia throughout 2012. After 2012 that amount decreased to \$7,000 a month but the checks continued to be made out to Patricia instead of Manfred. Def Ex. 14. Only Manfred worked at MSPS and although the checks were made payable to Patricia, they were Manfred's salary.

20/101; D. Ex. 14. Joint tax returns show that the income represented by checks made out to Patricia was declared as "business income" on the Schedule C and the. The CPA that prepared the returns testified that the income represented by those checks was attributed to Manfred. T. 29-46. Master's Ex. 316-342 of 344. All of the evidence indicates that the challenged checks, made out to Patricia Sprenger, were for Manfred's regular salary.

A review of the record shows that at times MSPS was unable to pay Manfred's salary monthly, but would make up the payments when the cash flow allowed. Def Ex. 14. The company ledger shows that the MSPS paid no monthly salary between December of 2013 and the end of May of 2014. At the end of May 2014 MSPS issued a check to Patricia for \$60,000. Def Ex. 14. Again from January through May of 2015 Manfred Sprenger did not receive any salary until MSPS issued a \$60,000 check, the majority of which was his backpay. 21-23/102-204; 26/109, D. Ex. 14. Consistent with the long established practice the \$60,000 check for back pay was written to Patricia Sprenger to be deposited into Manfred and Patricia's joint personal account. 21/102; D. Ex. 15; 16.

The payment of salary constitutes valuable consideration for the challenged transfers to Patricia Sprenger. Under the Statute of Elizabeth transfers for salary in exchange for employment is considered valuable consideration. In a case interpreting South Carolina's Statute of Elizabeth the yearly salary and bonus of Chapter 7 debtor-corporation's president, totaling less than \$250,000.00 for the head of a \$13 million company which had historically been very profitable, represented good faith compensation and bonus for president's service, and not an improper transfer under the Bankruptcy Code or South Carolina law. Bankr.Code, 11 U.S.C.A. § 548; S.C.Code 1976, §§ 27-23-10(A), 33-8-300(a). In re Southern Textile Knitters, 65 Fed.Appx. 426,

437 (4th Cir.2003).

Similarly, services and typical employee contributions in management of a business have been found to constitute value. Where the evidence established that the amount of transfers corresponds to a reasonably comparable salary range for a hotel manager an economic benefit was found to have been conferred by work and services provided. There the court found that without the work, the company would have needed an employee with a similar scope of work. Although compensation was made in a non-traditional way, the evidenced showed that both sides of the transaction had intentions and expectations that the defendant would act as the debtor's employee. *See In re Diplomat Const., Inc.*, No. 09-68613-MGD, 2013 WL 5591918, at *6 (Bankr. N.D. Ga. Aug. 6, 2013)

Generally, payments of compensation for services are presumed to be for fair consideration, and in order for a trustee to avoid them he must establish that the salary payments were in bad faith or the payments were excessive in light of the Defendants' employment responsibilities. *See e.g., Anderson & Assocs., Pa v. S. Textile Knitters De Hond. Sewing Inc. (In re S. Textile Knitters)*, 65 Fed.Appx. 426, 437 (4th Cir.2003); *Cilco Cement Corp. v. White*, 55 A.D.2d 668, 668, 390 N.Y.S.2d 178 (2d Dep't 1976) (holding that the salary paid to the president of the company was not a fraudulent conveyance because there was “no evidence that his salary was either excessive or unreasonable, or that the corporation did not receive full value in return.”); *See also Mills v. Everest Reinsurance Co.*, 410 F.Supp.2d 243, 254 (S.D.N.Y.2006). In the present case Mr. Sprenger’s services at MSPS were valuable consideration for the subsequent transfers to Patricia as compensation for that work.

Where challenged transfers are made in exchange for valuable consideration, those

transfers are exempt from the Statute of Elizabeth unless an actual intent to defraud is proven. Here MSPS's method of paying Manfred's salary by issuing monthly checks to Patricia was consistent in amount and method, and pre-dated any involvement with CCA by over a year. 15; 17-18 4th. It is well-settled under S.C. Code Ann. § 27-23-10(A) (Supp.1998) that where there is valuable consideration, a transfer may be set aside as a fraudulent conveyance only if there is an actual intent to defraud creditors imputable to the grantee. Future Group II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996) (citing Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937)). The established pattern of business conduct predating MSPS's involvement with CCA removes any question as to intent. Additionally, subsequent to the initiation of the case the court specifically allowed MSPS to continue to make transactions that were in the normal course of business, which to MSPS included the amount, timing and method of payment for Manfred's salary. 29. As all of these transactions were consistent with well established MSPS business practices predating any issue with CCA, the occurrence of the challenged transactions do not constitute evidence of an intent to defraud. Because consideration existed and the record fails to establish the intent to defraud, the Statute of Elizabeth does not apply to the transfers of funds to Patricia as payment of Manfred's salary. The Master's setting aside of those transactions was therefore error.

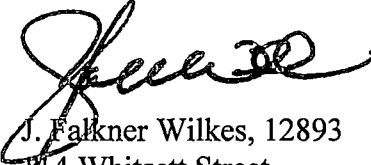
Additionally, as salary, the payments by MSPS to Patricia for Manfred's salary should be exempt from execution. See S.C. Code § 15-39-410, *Property which may be ordered to be applied to execution*: "The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, *except that the earnings of the debtor for*

his personal services cannot be so applied. Setting aside transactions that constitute the payment of Manfred's salary violates S.C. Code § 15-39-410. The Master erred in setting aside the payments of MSPS representing Manfred's salary.

CONCLUSION

Based on the foregoing the decision of the Master setting aside transfers representing Mr. Springer's salary should be reversed.

Respectfully submitted,



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May 17, 2017.

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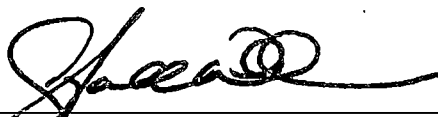
v.

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CERTIFICATE OF SERVICE

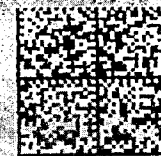
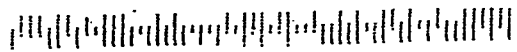
I certify that on the 17th day of May, 2017, I served the Appellant's Initial Brief of Respondents/Appellants and Designation of Matter on the Appellant/Respondent by placing a copy of same into the United States Mail, first class postage pre-paid, addressed to counsel of record as indicated below, and by facsimile if so indicated:

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