

**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,

vs.

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

RESPONDENT'S INITIAL BRIEF OF APPELLANT/RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. IS THE MASTER IN EQUITY'S FINDING THAT THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO PATRICIA SPRENGER WERE NOT BASED UPON VALUABLE CONSIDERATION AND ARE FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10 SUPPORTED BY THE RECORD?

STATEMENT OF THE CASE

Appellant-Respondent China Construction America of South Carolina Inc. (“CCA”) commenced this action on April 2, 2014, seeking damages for breach of contract for failure to manufacture and deliver steel in accordance with the terms of the subcontract with Respondent-Appellant MS Production Solutions, LLC (“MSPS”). (Complaint). By letter dated May 29, 2014 and filed June 3, 2014, MSPS attempted to respond to CCA’s Complaint. (Response to Complaint). MSPS’s Response to the Complaint did not constitute a valid answer and MSPS did not otherwise appear. An Order of Default was entered against MSPS on July 31, 2014 and filed on August 5, 2014. (Order of Default).

A damages hearing was held on November 17, 2014 before the Honorable G. Garrison Hill. (Notice of Motion and Motion for Damages Hearing). An Order of Judgment was entered against MSPS on December 23, 2014 and filed on December 24, 2014. (Order of Judgment). An Amended Order of Judgment in the amount of \$657,137.30 was subsequently entered against MSPS on January 28, 2015 and filed on January 29, 2015. (Amended Order of Judgment). Execution was issued on the amended judgment (hereinafter “the Judgment”) and thereafter returned *nulla bona* by the sheriff of Greenville County.

CCA commenced supplemental proceedings to examine the defendant and execute on MSPS’s assets to satisfy the Judgment. On May 5, 2015, a Rule to Show Cause and Order of Reference referring the matter to the Greenville County Master In Equity was filed. (Rule to Show Cause and Order of Reference). On May 5, 2015, CCA filed a Verified Petition for Supplemental Proceedings. (Verified Petition for Supplemental Proceedings). A supplemental proceedings hearing was held on June 2, 2015. (Hearing Tran. June 2, 2015).

After it became clear that MSPS diverted a significant amount of MSPS funds to Manfred and Patricia Sprenger, CCA filed a Motion for Execution and to Set Aside Fraudulent Transfers on September 23, 2015. (Motion to Execute and Set Aside Fraudulent Transfers). A hearing on CCA's Motion was held on October 2, 2015 before the Greenville County Master-In-Equity. (Hearing Tran. Oct. 2, 2015). At the direction of the Master-In-Equity, CCA filed a Motion to Join Respondents-Appellants Manfred and Patricia Sprenger as parties to the Supplemental Proceedings on October 12, 2015. (Motion to Join Parties). By Order dated October 27, 2015, the court held in abeyance the determination of the fraudulent nature of the transfers. (Order on Motion to Set Aside Conveyances, Oct. 27, 2015). The court heard CCA's Motion to Join on November 18, 2015, and Manfred and Patricia Sprenger were both represented individually by counsel (Hearing Tran. Nov. 18, 2015). On December 23, 2015, the court entered an Order joining Manfred and Patricia Sprenger as parties. (Order, Dec. 23, 2015).

A final hearing on CCA's Motion to Execute and Set Aside Transfers was held on March 2, 2016 (Hearing Tran. March 2, 2016), and the court entered an Order setting aside certain fraudulent conveyances on June 7, 2016. (Order, June 7, 2016). The parties all filed respective motions to reconsider the June 7, 2016 Order. (MSPS Motion to Alter or Amend; CCA Motion to Alter or Amend). The Master In Equity denied both motions. (Order, August 2, 2016).

CCA served its Notice of Appeal on August 29, 2016, seeking review of the June 7, 2016 Order setting aside certain fraudulent conveyances and the August 2, 2016 Order denying CCA's Rule Motion to Reconsider. On September 1, 2016, Appellants/Respondents MSPS, Manfred and Patricia Sprenger served their Notice of Cross-Appeal.

FACTS

This Appeal arises out of CCA's attempt to set aside and execute on approximately \$361,393.84 of MS Production Solutions, LLC ("MSPS") funds that were fraudulently diverted by MSPS to Manfred and Patricia Sprenger in an effort to avoid CCA's Judgment against it. Respondent/Appellant Manfred Sprenger ("Manfred") is the sole principal and owner of MSPS. Respondent/Appellant Patricia Sprenger ("Patricia") is Manfred's wife, and at all relevant times was not an employee of MSPS. (Hearing Tran. June 2, 2015, 9:13-20; Pl. Ex 1, tab 8, Patricia Sprenger Dep, 12:12-22).

MSPS fraudulently transferred cash from the MSPS corporate bank account at Bank of America to Patricia for no consideration. From August 29, 2013 through December 24, 2015, MSPS wrote thirty-three (33) separate checks payable to Patricia for various amounts ranging from as little as \$499.56 and as much as \$70,000.00 each.¹ (Pl. Ex. 1, tab 3, Pl Ex. 1, tab 8: 17:13-20:13; Appendix I). MSPS transferred \$303,393.84 to Patricia in total. Patricia deposited the checks into a personal joint bank account at First Citizens Bank that she owned with Manfred. Manfred and Patricia routinely withdrew the funds in large sums of cash from their First Citizens account, maintaining a low account balance at the bank. (Ex. A to Pl. Notice of Motion and Motion for Execution and to Set Aside Fraudulent Transfers). As the wife of the sole the principal and owner of the judgment debtor, MSPS, Patricia was an "insider transferee" of the funds.

When questioned regarding the location of the funds at her deposition, Patricia testified that she and Manfred had at least \$50,000.00 of MSPS funds in cash in their bedroom at their home. (Pl. Ex. 1, tab 8, Patricia Sprenger Dep. 30:11-23). Records from First Citizens Bank show

¹ For ease of reference, CCA prepared a chart summarizing the dates of the transfers in relation to the filing of pleadings and various motions in the underlying lawsuit. This summary is attached to this Brief as Appendix I. All evidence relating to the transfers and the filings are included in the Record on Appeal and is cited in the Appendix. (See Appendix I).

Patricia withdrew the \$50,000.00 in cash from her joint bank account only two days after CCA examined Manfred regarding MSPS's assets at the first supplemental proceeding hearing. (Pl. Ex. 1, tab 9). However, by the time a hearing could be held on CCA's Motion to Execute (11 days after Patricia Sprenger's deposition), Manfred and MSPS claimed only \$8,500.00 in cash remained. (Hearing Tran., Oct. 2, 2015, 6:4-20; Appendix I). Meanwhile, Manfred and Patricia continued to siphon MSPS funds for their personal use and deplete the balance in their First Citizens account throughout the supplemental proceedings. (Pl. Ex. 1, tab 8, Patricia Sprenger Dep. 38:1-12; Appendix I).

STANDARD OF REVIEW

The evidentiary standard governing fraudulent conveyance claims brought under the Statute of Elizabeth is the clear and convincing standard. Oskin v. Johnson, 400 S.C. 390, 396, 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. "In an appeal from an action in equity, [an appellate court] has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." Pinckney v. Warren, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

ARGUMENT

- I. THE MASTER-IN-EQUITY CORRECTLY HELD THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO PATRICIA SPRENGER WERE NOT BASED UPON VALUABLE CONSIDERATION AND ARE FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10.

From August 29, 2013 through April 2, 2014, the date CCA's Complaint was filed, MSPS transferred \$82,000.00 to Patricia (the "pre-Lawsuit transfers"). (Pl. Ex. 1, tab 3; Appendix I; Order, June 7, 2017 p. 6). From April 3, 2014, the day after the Complaint was filed, through December 24, 2015, MSPS transferred an additional \$221,593.84 to Patricia (the "post-Lawsuit

transfers”). Id. Patricia received \$303,393.84 in total from MSPS. Patricia was not an employee of MSPS at the time of the transfers.² (Hearing Tran. Jun. 2, 2015, 9:13-20; Pl. Ex 1, Tab 8, Patricia Sprenger Dep, 12:12-22).

The Master-In-Equity correctly determined that both the pre-Lawsuit and post-Lawsuit transfers to Patricia were fraudulent transfers. Specifically, the Master held the transfers to Patricia were not based upon valuable consideration; therefore, a finding on fraudulent intent was not necessary. (Order, 6/7/16, pp. 5-6). However, the Master set aside only the \$221,593.84³ in post-Lawsuit transfers to Patricia. Id.

It is well-established in South Carolina that a debtor may not transfer or convey property to frustrate or impede a creditor. Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937). To that point, the Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out

² At the final hearing, Manfred testified that Patricia suddenly became an MSPS employee in September 2015, after CCA filed its Motion to Set Aside the fraudulent transfers. (Hearing Tr. Mar. 2, 2016, 24:22-25:8; Appendix I, R. p. ___). According to MSPS, Patricia earned a total of \$3,600 in wages from September 2015 through December of 2015. (Def. Ex. 17, March 2, 2016). However, there is no evidence or testimony in the record demonstrating that Patricia worked in any capacity for MSPS to earn those payments as legitimate wages. While Manfred testified that Patricia was employed because she was “spending time” at MSPS, Patricia did not testify at the March 2, 2016 hearing regarding her new employment. (Hearing Tr. Mar. 2, 2016, 24:22-25:8). In sum, MSPS transferred a total of \$303,393.84 to Patricia, \$299,793.84 of which was transferred when Patricia was indisputably not an employee of MSPS. As to the remaining \$3,600 MSPS contends are Patricia’s wages, the only evidence before the court was the transferor’s own testimony that Patricia became an MSPS employee in September 2015. CCA contends Patricia continued to receive funds from MSPS after September of 2015 even though she was not actually an employee. As CCA notes herein, where a conveyance is made to a close family member, the burden is on the transferee and not the transferor to establish valuable consideration and the bona fides of the transaction by clear and convincing evidence. Without testimony from Patricia regarding her employment and earnings, Patricia failed to meet her burden. Therefore, CCA is entitled to set aside the entire \$303,393.84 transferred to Patricia from MSPS.

³ The Master-In-Equity set aside all of the \$221,593.84 of MSPS funds transferred to Patricia after CCA’s Complaint was filed, which included the \$3,600 MSPS claimed Patricia earned as wages in September-December 2015. (Order, Jun. 7, 2016 pp. 8-9).

of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10(A) (2007). Our courts have applied the Statute of Elizabeth to set aside conveyance 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.**

Mathis v. Burton, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting Durham v. Blackard, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)) (emphasis added); see also Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012).

The Master-In-Equity correctly held MSPS and Patricia failed to establish valuable consideration for the post-Lawsuit transfers from MSPS to Patricia. In the absence of valuable consideration, the party seeking to set aside a transfer does not need to prove fraudulent intent. Id. A transfer should be set aside if the transferor was indebted when the transfer was made, there was no

consideration for the transfer and the indebted party fails to retain assets or property to satisfy the judgment. Id. Furthermore, it is well-settled that “where a conveyance to a family member or close relative is attacked on account of its voluntary character, the law imposes a duty of the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing evidence.” First State Sav. & Loan Ass’n v. Nodine, 291 S.C. 445, 450, 354 S.E.2d 51, 54 (1987) (citing Coleman v. Daniel, 261 S.C. 198, 199 S.E.2d 74 (1973) (emphasis added). Consideration is defined as “some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.” Furman Univ. v. Waller, 124 S.C. 68, 117 S.E. 356, 358 (1923).

Manfred, as the sole principal and owner of MSPS, caused MSPS to transfer \$303,393.84 of MSPS funds to his wife. (Appendix I). Therefore, the burden shifted to Patricia, the transferee, to establish valuable consideration and the bona fides of the transfers. Patricia failed to prove there was valuable consideration and she further failed to demonstrate that the transfers were bona fide.

It is undisputed that the checks at issue were made payable to Patricia and not Manfred. Patricia testified that she never loaned MSPS any money.⁴ (Pl. Ex. 8, March 2, 2016; Patricia Sprenger Dep. 19: 1-17). Both Manfred and Patricia testified that Patricia was never an employee of MSPS. (Patricia Sprenger Dep. 12:12-22; Pl. Ex. 1, Tab 8; Hearing Tran. Jun. 2, 2015, 9:13-20). The compensation agreement MSPS relies upon was between Manfred on behalf of MSPS and himself; it was not between MSPS and Patricia. (Def. Ex. 14). Therefore, it cannot be said that the transfers from MSPS to Patricia were in satisfaction of any purported obligation of MSPS to Manfred. For that same reason, the transfers from MSPS to Patricia cannot satisfy any obligation of MSPS to repay

⁴ Even if the transfers from MSPS to Patricia could somehow satisfy MSPS’s obligation to repay loans from Manfred to MSPS, Manfred and MSPS were not entitled to repay those obligations over CCA’s judgment. Durham v. Blackard, 313 S.C. 432, 438 S.E.2d 259 (Ct. App. 1993) (“a debtor must be just before he is generous”); Woody v. Dean, 24 S.C. 499 (1886).

unsecured, undocumented loans by Manfred to MSPS. As such, the transfers to Patricia were not based upon valuable consideration.

Despite Manfred's self-serving testimony, the record reflects that Manfred and Patricia never received a salary from MSPS. (Def. Ex. 18). The accountant who prepared individual and corporate tax returns for Manfred, Patricia and MSPS testified that Patricia did not claim the money MSPS transferred to her as taxable income. (Hearing Tran. Mar. 2, 2016, 30:6-10). Notably, however, Manfred did not either. (Pl. Ex. 13; Pl. Ex. 14). A simple review of Manfred and Patricia's individual tax returns demonstrates that neither Manfred nor Patricia claimed any income or withholdings for wages in the years 2012, 2013 or 2014 (Pl. Ex. 13; Pl. Ex. 14)., nor are they listed as employees on MSPS's own employee quarterly wage reports for the years 2013 or 2014. (Def. Ex. 18, Hearing Mar. 2, 2016).⁵ Therefore, consistent with his testimony at the first supplemental proceeding hearing on June 2, 2015, it was never the practice MSPS to pay Manfred a salary. (Hearing Tran. Jun. 2, 2015, 8:20-9:11). At the June 2, 2016 hearing, Manfred testified that MSPS suddenly hired Patricia as an employee in September 2015, immediately after the depositions and after CCA moved to set aside the fraudulent transfers. (Hearing Tr. Mar. 2, 2016, 24:22-25:8; Appendix I). MSPS transferred a total of \$73,484.28 of MSPS funds to Patricia in 2015; however, MSPS's 2015 annual employee wage summary indicates Patricia earned a maximum of \$3,600.00 in wages for the entire year. (Def. Ex. 17).

⁵ Without citing the Record, Respondents/Appellants inaccurately represent in their initial brief that "the tax returns show income represented by the checks made out to Patricia was declared as 'business income' on the Schedule C." (App. Initial Brief of Resp./App. p.6). MSPS's accountant provided no testimony in that regard, and payments from MSPS to Patricia are not business income to MSPS a matter of common sense. Nevertheless, a plain reading of the relevant tax returns indicates the payments to Patricia were not claimed as wages paid by MSPS to Manfred or Patricia as W-2 employees, and Manfred and Patricia did not claim any wages as income on their personal returns. (Pl. Ex. 13; Pl. Ex. 14, Mar. 2, 2016).

Finding the transfers lacked consideration, the Master-In-Equity held a finding of fraudulent intent was not necessary to set aside the post-Lawsuit transfers to Patricia. (Order, Jun. 7, 2016, p. 6). However, even assuming valuable consideration existed, which it did not, the evidence in this case clearly supports an alternative finding of fraudulent intent. Establishing that a debtor acted with actual intent to hinder, delay or defraud a creditor is rarely proven by direct evidence. In re Schmit, 71 B.R. 587, 590 (Bankr. D. Minn. 1987). It is typically inferred from the facts and circumstances of the debtor's conduct. Id.; see also Farmers Co-op. Ass'n v. Strunk, 671 F.2d 391, 395 (10th Cir.1982) ("Fraudulent intent of course may be established by circumstantial evidence, or by inferences drawn from a course of conduct.").

In determining whether a debtor acted with the requisite intent to establish a fraudulent conveyance, courts often evaluate the particular circumstances of the transfer for "badges of fraud." Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) ("Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as 'badges of fraud.' The badges tend to excite suspicions as to the Bona fides of a challenged conveyance."). The presence of one or more badge of fraud creates a rebuttable presumption of intent to defraud. See Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999). In Coleman, our Supreme Court stated the following regarding the badges of fraud:

The facts which are recognized indicia of fraud are numerous, and no court could pretend to anticipate or catalog them all. Among the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

Id. (citing 37 Am.Jur.(2d), Fraudulent Conveyances, § 10 (1968)); see also In re Jones, 397 B.R. 765, 770 (Bankr. D.S.C. 2008); In re Ducate, 369 B.R. 251 (Bankr. D.S.C. 2007). “Although the presence of a single factor, i.e., badge of fraud, may cast suspicion on the transferor’s intent, the confluence of several in one transaction generally provides conclusive evidence of an actual intent to defraud.” Gilchinsky v. Nat’l Westminster Bank, 732 A.2d 482, 490 (1999).

The circumstances of MSPS’s transfers to Patricia meet at nearly all of the badges of fraud listed above. First, MSPS was indebted to CCA at the time of each transfer to Patricia. All of the transfers occurred after MSPS breached its contract with CCA, and the majority of the transfers occurred after CCA filed its Complaint against MSPS. (Amended Order of Judgment, Jan 29, 2015; Complaint; Appendix I). Manfred routinely transfers money from the MSPS back account to himself and Patricia as he pleases, claiming the transfers are compensation for his salary or are unsecured and undocumented loan repayments. (Pl Ex. 1, tab 8; Patricia Sprenger Dep.20:7-21:14) Without documentation, it is impossible to determine what Manfred contends he loaned MSPS, what remains to be repaid and what Manfred is owed as salary or back-pay. (R. p. __) In reality, the records prove Manfred’s deliberate efforts to siphon money from the MSPS bank account by transferring large sums (as much as \$70,000 in a single transfer) to Patricia for his own benefit and in a calculated attempt avoid CCA’s judgment. (R. p. __; Appendix I). Manfred was forced to return some of the money to the MSPS account on several occasions (which he characterizes as “loans”) to keep the business bank accounts from having a negative balance, a natural consequence of Manfred’s mismanagement and self-dealing. (R. p. __). While MSPS continued to make unsecured “loan repayments” to Manfred and Patricia⁶ throughout the supplemental proceedings and in violation of the Rule to Show Cause, MSPS never made a single payment toward CCA’s

⁶ Notably, Patricia testified at her deposition that she has never made a loan to MSPS. (Pl. Ex. 1, Tab 8; Patricia Sprenger Dep. 19: 1-17).

judgment. The law does not allow a business to repay its members for undocumented “loans” prior to paying judgment creditors. Durham v. Blackard, 313 S.C. 432, 438 S.E.2d 259 (Ct. App. 1993) (“a debtor must be just before he is generous”); Woody v. Dean, 24 S.C. 499 (1886).

The remaining badges of fraud are clearly present. In less than 2.5 years, Manfred caused MSPS to transfer \$303,393.84 of MSPS funds to his wife, a person in a close relationship with the business. (Appendix I). Many of the transfers to Patricia occurred on or near significant dates related to the Lawsuit.⁷ Id. MSPS attempted to conceal the transfers from CCA when Manfred attempted to thwart Patricia’s deposition testimony regarding the location of the cash.⁸ (Pl. Ex. 1, tab 8, Patricia Sprenger Dep. 30:1-30:22). MSPS departed from ordinary practice by transferring the funds to Patricia, particularly as to the larger transfers that occurred at opportune times throughout the Lawsuit. MSPS reserved the benefit of the funds by transferring them to Patricia, who deposited the funds in a joint account she held with its owner. Finally, MSPS retained possession of the funds through Manfred, who shared a home with Patricia where the funds were either kept in cash or left in a joint bank account that he owned.

⁷ From March 2014 to May 2015, MSPS wrote checks payable to Patricia in the following amounts: \$40,000.00, \$27,000.00, \$70,000.00 and \$60,000.00. (R. p. __; Appendix I). As found by the trial court, these checks were written close to significant dates in the Lawsuit. (R. p. __; Appendix I). The \$40,000 check was written less than a week before CCA filed its Complaint against MSPS. (R. p. __; Complaint). The \$27,000.00 check was written less than a week before the Order of Default Judgment was entered. (R. p. __; Order for Default Judgment). The \$70,000.00 check was written approximately two weeks after MSPS was served with notice of the damages hearing. (R. p. __; Notice of Motion and Motion for Damages Hearing). Finally, the \$60,000.00 check was written on May 27, 2015, one week before the first supplemental proceeding hearing. (R. p. __; Tr. Hearing Jun. 2, 2015).

⁸ During her deposition, Patricia was questioned regarding the amount of cash kept in the Sprenger’s home. (Patricia Sprenger Dep. 30:1-30:22). In order to conceal the amount and location of the cash, Manfred interjected and attempted to prevent Patricia from testifying. Id. Manfred’s failure to mention that he had a significant amount of cash in his bedroom along with his attempts to prevent Patricia from providing truthful testimony is further proof that he took steps to hinder or delay CCA’s collection efforts.

The circumstances of this case and the presence of these badges of fraud surrounding MSPS' transfers reveal its "actual intent to hinder, delay, or defraud" CCA from collecting on its judgment. The contradictory testimony and the actions taken by Manfred and his wife, Patricia, are both strong evidence of their intent to prevent CCA from collecting its judgment.

II. RESPONDENTS/APPELLANTS FAILED TO PRESERVE OR OTHERWISE ABANDONED THEIR REMAINING ISSUES ON APPEAL.

Respondents/Appellants failed to properly preserve or otherwise abandoned their remaining issues on appeal. "For an issue to be properly preserved it has to be raised and ruled on by the trial court." State v. Stahlnecker, 386 S.C. 609, 690 S.E.2d 565 (2010) (citing State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004)). A party must file a Rule 59(e), SCRPC, motion to preserve an issue the trial court fails to rule on. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). An issue not properly preserved cannot be raised for the first time on appeal. Johnson v. Lloyd, 407 S.C. 610, 757 S.E.2d 705 (2014) (citing State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994)).

Respondents/Appellants define three issues in Appellants' Initial Brief of Respondents/Appellants: (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, and (3) Did the Master err in applying the proper standard in analyzing the challenged transfers. (Appellants' Initial Brief of Respondents/Appellants, p.3). Of those three, only the second issue challenging the Master's finding that the transfers to Patricia lacked valuable consideration was raised by Respondents/Appellants, ruled upon by the lower court and substantively argued in Appellants Initial Brief of Respondents/Appellants. (Def. Mot. to Alter or Amend; Order Denying Mot. to Alter or Amend).

Respondents/Appellants failed to preserve the first and third issues defined in Respondents/Appellants' Statement of Issues on Appeal. In Appellants Initial Brief, Respondents/Appellants argue for the first time that the transfers from MSPS to Patricia are exempt from execution pursuant to S.C. Code § 15-39-410. (App. Initial Brief of Resp/App. pp. 8-9).⁹ Whether a transfer is subject to a statutory exemption and whether a transfer is fraudulent or based upon valuable consideration are distinct issues of law and fact. Respondents/Appellants did not raise the statutory exemption or the issue regarding the applicable standard of proof in Respondents/Appellants' Motion to Reconsider the June 7, 2016 Order. (Def's Mot. To Alter or Amend, June 16, 2016). Finally, Respondents/Appellants failed to substantively brief or argue their third issue on appeal, abandoning it entirely. Because Appellants failed to argue that the transfers to Patricia are "earnings of the debtor" exempt from execution pursuant to S.C. Code § 15-39-410 until their brief to the Court of Appeals, and because Appellants failed to raise the issues regarding the standard of proof applied by the Master in both their Motion to Reconsider and Initial Brief, these issue are, respectfully, not preserved for appellate review.

Without waiving its argument relating to the preservation of these issues on appeal, CCA contends the Master-in-Equity applied the appropriate standard of proof in finding the transfers to Patricia were without consideration. (Order, Jun. 7, 2016). CCA further contends that the transfers to Patricia are not exempt under S.C. Code § 15-39-410 even if MSPS could show the payments to Patricia were loan repayments or compensation for Manfred's salary, which it cannot. S.C. Code § 15-39-410 provides "[t]he judge may order any property of the judgment debtor, not exempt

⁹ While Appellants broadly characterize their first issue on appeal as "whether the master erred in *setting aside* the transfers from MSPS to Patricia", substantively Appellants argue that the master erred in setting aside the transfers because they are exempt pursuant to S.C. Code Ann. 15-39-410 as "earnings of the judgment debtor". (Appellants' Initial Brief of Respondents/Appellants pp. 3, 8-9) (emphasis added).

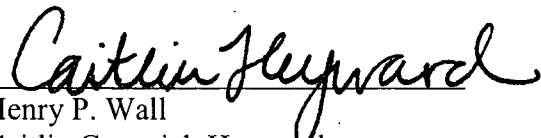
from execution, in the hands of either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except the earnings of the debtor for his personal service cannot be so applied.” (Emphasis added). Here, neither Manfred nor Patricia are the Judgment debtor. MSPS is the judgment debtor, and Manfred and Patricia are third parties holding the property of the judgment debtor. (see Order of Judgment). Any salary attributable to Manfred are not the earnings of MSPS; therefore, neither Manfred nor MSPS can claim the transfers are exempt from execution.

CONCLUSION

For the reasons stated above, this Court should affirm the lower court’s holding that the transfers from MSPS to Patricia Sprenger are fraudulent transfers that are not based upon valuable consideration and direct the lower court to enter a judgment against Patricia for \$303,393.84. Appellant’s remaining issues on appeal should be dismissed on basis that they are not preserved for appellate review.

Respectfully submitted,

**BRUNER, POWELL, WALL
& MULLINS, LLC**



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Columbia, South Carolina 29260
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Attorneys for Appellant-Respondent

August 31, 2017

**APPENDIX I
TO INITIAL BRIEF OF APPELLANT-RESPONDENT**

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
1.	8/29/2013	53663		Patricia Sprenger	\$7,000.00	R. p. _
2.	9/27/2013	53716		Patricia Sprenger	\$7,000.00	R. p. _
3.	10/30/2013	53751		Patricia Sprenger	\$7,000.00	R. p. _
4.	11/26/2013	53784		Patricia Sprenger	\$7,000.00	R. p. _
5.	2/25/2014	53894		Patricia Sprenger	\$7,000.00	R. p. _
6.	3/27/2014	53948		Patricia Sprenger	\$40,000.00	R. p. _
7.	3/27/2014	53946		Patricia Sprenger	\$7,000.00	R. p. _
	4/2/2014		Lawsuit Filed			R. p. _
8.	4/28/2014	54042		Patricia Sprenger	\$7,000.00	R. p. _
	5/2/2014		Affidavit of Service of Lawsuit			R. p. _
9.	5/14/2014	54079		Patricia Sprenger	\$1,600.00	R. p. _
	5/29/2014		MSPS Response to Complaint			R. p. _
10.	5/29/2014	54084		Patricia Sprenger	\$7,000.00	R. p. _
11.	6/24/2014	54119		Patricia Sprenger	\$7,000.00	R. p. _
	7/25/2014		Notice of Motion and Motion for Default Served			R. p. _
	7/29/2014		Notice of Motion and Motion for Default Filed			R. p. _
12.	7/30/2014	54165		Patricia Sprenger	\$27,000.00	R. p. _

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
	8/5/14		Order of Default Filed			R. p. _
13.	8/27/2014	54191		Patricia Sprenger	\$7,000.00	R. p. _
	9/5/2014		Motion for Damages Hearing Filed			R. p. _
14.	9/29/2014	54255		Patricia Sprenger	\$70,000.00	R. p. _
15.	9/29/2014	54252		Patricia Sprenger	\$7,000.00	R. p. _
16.	11/3/2014	54283		Patricia Sprenger	\$7,000.00	R. p. _
	11/17/14		Damages Hearing Held			R. p. _
17.	12/22/2014	54341		Patricia Sprenger	\$7,000.00	R. p. _
	12/24/2014		Order of Judgment Filed			R. p. _
	1/29/2015		Amended Order of Judgment Filed			R. p. _
	4/13/2015		VP for Supplemental Proceedings			R. p. _
	5/1/2015		Rule to Show Cause Entered			R. p. _
	5/13/15		RTSC served on MSPS			R. p. _
18.	5/27/2015	54522		Patricia Sprenger	\$60,000.00	R. p. _
	6/2/2015		Supplemental Proceeding Hearing			R. p. _
	6/4/2015			Patricia \$50,000.00 cash withdrawal from First Citizens Account		R. p. _
19.	6/23/2015	54548.		Patricia Sprenger	\$7,000.00	R. p. _ /

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
	7/31/2015		Subpoena Duces Tecum- Patricia			R. p._
20.	8/12/2015	54598		Manfred Sprenger	\$7,000.00	R. p._
	9/21/2015		Deposition of Manfred, Patricia and 30(b)(6) of MSPS			R. p._
	9/22/2015		CCA's Motion for Execute and Set Aside Fraudulent Transfers			R. p._
21.	9/22/2015	55055		Manfred Sprenger	\$7,000.00	R. p._
22.	9/23/2015	55057		Manfred Sprenger	\$14,000.00	R. p._
23.	9/24/2015	54806		Patricia Sprenger	\$499.56	R. p._
	10/2/2015		Hearing on Motion to Set Aside Fraudulent Transfers			R. p._
24.	10/6/2015	55060		Manfred Sprenger	\$7,000.00	R. p._
	10/6/2015		Motion to Join Manfred and Patricia as Parties			R. p._
25.	10/8/2015	55701		Patricia Sprenger	\$499.56	R. p._
	10/13/2015		First Order on Motion to Set Aside Fraudulent Conveyances			R. p._
26.	10/15/2015	55708		Patricia Sprenger	\$499.56	R. p._
	10/19/2015		Motion for Contempt and Sanctions			R. p._

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
27.	10/22/2015	55716		Patricia Sprenger	\$499.56	R. p. _
	10/26/2015		Amended Order on Motion to Set Aside Fraudulent Conveyances			R. p. _
28.	10/29/2015	55723		Patricia Sprenger	\$499.56	R. p. _
29.	11/5/2015	55730		Patricia Sprenger	\$499.56	R. p. _
30.	11/12/2015	55737		Patricia Sprenger	\$499.56	R. p. _
	11/18/15		Hearing on Motion to Join Parties			R. p. _
31.	11/18/2015	55118		Manfred Sprenger	\$10,000.00	R. p. _
32.	11/19/2015	55743		Patricia Sprenger	\$499.56	R. p. _
33.	11/27/2015	55749		Patricia Sprenger	\$499.56	R. p. _
34.	12/3/2015	55139		Manfred Sprenger	\$10,000.00	R. p. _
35.	12/3/2015	55757		Patricia Sprenger	\$499.56	R. p. _
36.	12/7/2015	55140		Manfred Sprenger	\$2,800.00	R. p. _
37.	12/10/2015	55766		Patricia Sprenger	\$499.56	R. p. _
38.	12/17/2015	55774		Patricia Sprenger	\$499.56	R. p. _
39.	12/24/2015	55782		Patricia Sprenger	\$499.56	R. p. _
40.	12/24/2015	55790		Patricia Sprenger	\$499.56	R. p. _
TOTAL					\$361,393.84	

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 31 2017

SC 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,

vs.

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

PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S INITIAL BRIEF OF APPELLANT/RESPONDENT AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** upon the attorney of Record for the Respondents/Appellants by mailing a copy of the same to their attorney of record, J. Falkner Wilkes, Esquire, Attorney at Law, 114 Whitsett Street, Greenville, South Carolina 29601 via United States mail, postage prepaid this 31st day of August 2017.


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AUTHOR'S E-MAIL: CHEYWARD@BRUNERPOWELL.COM

** Also Admitted in District of Columbia

August 31, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings

Clerk of Court

South Carolina Court of Appeals

1015 Sumter Street

Columbia, SC 29201

Re: China Construction America of S.C., Inc. v. MS Production Solution, LLC
Appellate Case No.: 2016-1787
C/A No.: 2014-CP-23-1871
Our File No.: 9-948.131


Dear Ms. Kitchings:

Enclosed for filing please find the **RESPONDENT'S INITIAL BRIEF OF APPELLANT/RESPONDENT**. Also enclosed please find the Designation of Matter to be Included in the Record on Appeal and Proof of Service evidencing that the Respondent's Initial Brief of Appellants/Respondent and Designation of Matter were served on J. Falkner Wilkes, Esquire, attorney for the Respondent/Appellant.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With my kindest regards, I am

Sincerely yours,


Caitlin C. Heyward

CCH/kg

Enclosures

cc: J. Falkner Wilkes
Mike Watson, China Construction

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AUG 31 2017

SC Court of Appeals