

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY
COURT OF COMMON PLEAS

R. Thayer Rivers, Jr., Special Referee

Case No. 2009-CP-15-1148

Roger Wendell Walker, as the Personal Representative of the Estate of Kenneth Ray Walker and individually as a surviving child and Devisée of the Decedent, Kenneth Ray Walker (d/o/d 9/20/2008), Jimmy Ray Walker, and Wilson Whitney Walker as surviving children and Devisées of the Decedent, Kenneth Ray Walker, who died testate on 9/20/2008, Respondents,

v.

Catherine W. Brooks, Appellant.

FINAL REPLY BRIEF OF APPELLANT

Everett Hope Garner &
Benjamin A. Dunn, II
HOLLER, DENNIS, CORBETT, ORMOND,
PLANTE & GARNER
1777 Bull Street
Columbia, SC 29201
(803) 765-2968
SC Bar Nos. 2332 & 12036
Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities..... iii

Arguments

I. KENNETH WALKER’S DEEDS TO CATHERINE BROOKS WERE NOT
EQUITABLE MORTGAGES..... 2

II. APPELLANT WAS NEVER PAID ANY MONEY OTHER THAN WHAT
SHE WAS OWED AS OWNER OF THE PROPERTY..... 3

III. THE FACTS OF THIS CASE DO NOT MATCH THOSE FOUND IN
WALL V. HUGUENIN..... 4

IV. RESPONDENTS’ MISAPPREHEND APPELLANT’S ARGUMENT AS
TO THE APPLICABLE STANDARD OF PROOF IN THIS CASE..... 5

Conclusion..... 6

TABLE OF AUTHORITIES

Cases

<u>F. Gregorie & Son v. Hamlin</u> , 273 S.C. 412, 257 S.E.2d 699 (1979).....	5-6
<u>Wall v. Huguenin</u> , 305 S.C. 100, 406 S.E.2d 347 (1991).....	4

ARGUMENTS

I. KENNETH WALKER'S DEEDS TO CATHERINE BROOKS WERE NOT EQUITABLE MORTGAGES.

On page 16 of their Brief, Respondents state:

It is noteworthy that Appellant never challenges the Special referee's finding that the transfers of property from decedent to Appellant were not a gift. Her brief then fails to explain why Decedent would transfer property worth \$87,400.00 in 2003 for \$5.00 and love and affection. If these transfers were not gifts-a position neither party claims-then the best explanation is that these transfers were intended as equitable mortgages.

(Final Brief of Respondents, p. 16). While it is clearly the Respondents' position that the deeds from Decedent Kenneth Walker to the Appellant Catherine Brooks were equitable mortgages, characterizing these deeds in this manner is not the "best explanation" of what actually occurred. The better view is that the relationship between Mrs. Brooks and her brother, Kenneth Walker, was multifaceted. When Kenneth Walker deeded property to Mrs. Brooks, he was obviously aware that he was conveying land to a close family member with whom he shared a close relationship and who helped him out financially. (R. p. 4) Thus, even though Kenneth Walker's conveyances to Mrs. Brooks were not simply gifts, it is nonsensical to claim that his feelings for his sister played no part in his deeding the land to her. Taking this into account, the best explanation is that Kenneth Walker's 1996 and 2003 deeds were exactly what both purport to be on their faces; fee simple conveyances of property to his sister, Catherine W. Brooks.

Likewise, Respondents further argue that Mrs. Brooks' own testimony provides evidence of an equitable mortgage:

Her own testimony supports a finding of equitable mortgage: "And I took my children's money, what they would have gotten, put it down there. Kenneth told me, don't worry, Cat, you'll have the land to cover it."

(Final Brief of Respondents, p. 16). Here again the Respondents ignore the better explanation; that Kenneth Walker conveyed property to his sister as payment for her taking care of him.

II. APPELLANT WAS NEVER PAID ANY MONEY OTHER THAN WHAT SHE WAS OWED AS OWNER OF THE PROPERTY.

Respondents further argue that since Mrs. Brooks received some money from the land, she was therefore being paid by Kenneth Walker to deed the land back. First, they cite the handwritten note identified as Plaintiff's Exhibit 18 as stating that "Any money Kenneth pays Catherine W. Brooks will be toward the sixty thousand dollars." (Final Brief of Respondents, p. 18) They also point to Plaintiffs' Exhibits 31 and 32 as indicating that Larry Herndon paid Mrs. Brooks nearly forty thousand dollars between 2003 and 2005. (Final Brief of Respondents, p. 19) This argument simply ignores the facts of the case. The checks from Lowcountry Concrete, Inc., and Colleton Sand Plant, Inc., (R. pp. 694 & 719) both companies owned by Mr. Larry Herndon, were paid to Mrs. Brooks pursuant to her lease with Mr. Herndon dated May 1, 2003. (R. p. 686) This lease involved the removal of sand from a 118.87-acre parcel owned by Respondent Roger Walker (R. p. 687) The companion lease for the use of Roger Walker's property, also dated May 1, 2003, was introduced at trial as Plaintiffs' Exhibit 29. (R. p. 678) The payments to Mrs. Brooks were based on Mr. Herndon's right to discharge spoil and waste water on Mrs. Brooks land as well as the use of the office and truck scales located on Mrs. Brooks property. (R. pp. 686-87)

Respondents also attempt to claim that these payments constituted portions of the \$60,000 referenced in Plaintiff's Exhibits 15 and 18. (R. pp. 524 & 532) But, as Mrs. Brooks explained at trial, she was willing to sell her land to Kenneth Walker for \$60,000, and though Kenneth at the time had no money, she hoped that Kenneth would be able to generate this sum

by means of dredging sand from the pond on his property which Larry Herndon would then purchase.¹ (R. p. 273, ln. 16 – p. 274, ln. 9; p. 311, lns. 9-15) Unfortunately, this plan never came to fruition, and Brooks never received any money from the proposed sand operation. (R. p. 294, lns. 9-24; p. 309, lns. 9-20) For this reason, Mrs. Brooks was never paid any money other than that which already belonged to her as the rightful owner of the property.

III. THE FACTS OF THIS CASE DO NOT MATCH THOSE FOUND IN WALL V. HUGUENIN.

The Respondents' attempt to cast this action as being in the mold of Wall v. Huguenin, 305 S.C. 100, 406 S.E.2d 347 (1991), fails entirely. In Huguenin, the deed in question contained, on its face, an option to repurchase the Huguenin ancestral estate known as Roseland. Id. 406 S.E.2d at 348. Thus, the relationship between Wall and Huguenin was established at the time of the initial conveyance such that the issue facing the Supreme Court was if the Huguenin family's option to repurchase had survived the twelve years that passed since the deed had been executed. In the present action, there were no contemporaneous re-conveyance agreements between Kenneth Walker and Catherine Brooks when he conveyed property to her in 1996 and 2003. The handwritten notes identified as Plaintiffs' Exhibits 15 and 18 both post-date these deeds and thus cannot be read with them to form an option to repurchase, much less equitable mortgages. (R. pp. 524 & 532)

¹ The pond was located on property owned by Kenneth Walker, but the spillway for the pond was located on Mrs. Brooks' property.

IV. RESPONDENTS' MISAPPREHEND APPELLANT'S ARGUMENT AS TO THE APPLICABLE STANDARD OF PROOF IN THIS CASE.

Respondents further contend that Mrs. Brooks incorrectly argues that F. Gregorie & Son v. Hamlin, 273 S.C. 412, 257 S.E.2d 699 (1979), requires them to prove the existence of an equitable mortgage by clear and convincing evidence. (Final Brief of Respondents, p. 21). The relevant passage from Hamlin states:

Gregorie has established the transaction as being security for the debt to Hamlin in the way of an equitable mortgage by clear, specific, definite, and convincing evidence; this showing was more than the presentment of a Prima facie case sufficient to initiate presumptions as to the nature of the instruments, the magnitude of the overwhelming evidence is sufficient by itself to declare the deed absolute in form as an equitable mortgage as a matter of law.

Id. 257 S.E.2d at 708. Because Gregorie's evidence that the deed to Hamlin was, from its execution, meant to be a mortgage was so great, "clear, specific, definite, and convincing" according to the opinion, the Supreme Court found that the deed in question was obviously a mortgage.

Mrs. Brooks' point here is to show that the evidence presented by the Respondents, upon which the Special Referee relied in finding the existence of an equitable mortgage, pales in comparison to that presented in Hamlin. Consider the Supreme Court's findings in this regard:


The application by Gregorie was for a loan, and all the negotiations which were conducted were with respect to the form of the security upon the premises in question; and Gregorie at no time made any pretense that he would have sold "OAKLAND" Plantation for the sum actually advanced by Hamlin or for five times that amount. There is simply not a word anywhere that suggests a sale in any logical application of the facts in evidence.

Id. 257 S.E.2d at 706. The situation in the present action is precisely the opposite. Here, there is no evidence that there was any contemporaneous agreement to re-convey when Kenneth Walker

executed his deeds in 1996 and 2003. Thus, while Hamlin presented the court with a situation in which a deed was obviously intended to be a mortgage, such overwhelming evidence simply does not exist in this case.

CONCLUSION

For the additional reasons presented herein, Appellant respectfully requests that this Court reverse the judgment of the Special Referee and issue an Order confirming Mrs. Brooks' fee simple ownership of the Property.



Everett Hope Garner &
Benjamin A. Dunn, II
HOLLER, DENNIS, CORBETT, ORMOND,
PLANTE & GARNER
1777 Bull Street
Columbia, SC 29201
(803) 765-2968
SC Bar Nos. 2332 & 12036
Attorneys for Appellant

May 15, 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY
COURT OF COMMON PLEAS

R. Thayer Rivers, Jr., Special Referee

Case No. 2009-CP-15-01148

Roger Wendell Walker, as the Personal Representative of the Estate of Kenneth Ray Walker and individually as a surviving child and Devisee of the Decedent, Kenneth Ray Walker (d/o/d 9/20/2008), Jimmy Ray Walker, and Wilson Whitney Walker as surviving children and Devisees of the Decedent, Kenneth Ray Walker, who died testate on 9/20/2008, Respondents,

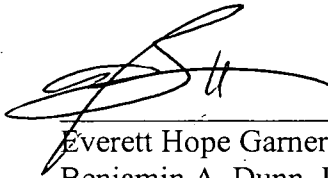
v.

Catherine W. Brooks, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

May 15, 2012



Everett Hope Garner &
Benjamin A. Dunn, II
HOLLER, DENNIS, CORBETT, ORMOND,
PLANTE & GARNER
1777 Bull Street
Columbia, SC 29201
(803) 765-2968
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY
COURT OF COMMON PLEAS

R. Thayer Rivers, Jr., Special Referee

Case No. 2009-CP-15-1148

RECEIVED

MAY 1 6 2012

SC Court of Appeals

Roger Wendell Walker, as the Personal Representative of the Estate
of Kenneth Ray Walker and individually as a surviving child and
Devisee of the Decedent, Kenneth Ray Walker (d/o/d 9/20/2008),
Jimmy Ray Walker, and Wilson Whitney Walker as surviving
children and Devisees of the Decedent, Kenneth Ray Walker, who
died testate on 9/20/2008, Respondents,

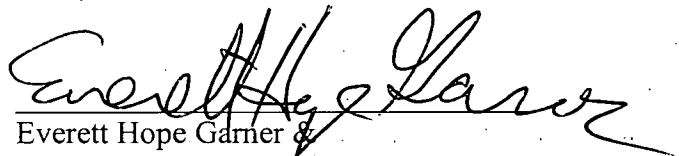
v.

Catherine W. Brooks, Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant on Roger Wendell Walker, as the
Personal Representative of the Estate of Kenneth Ray Walker and individually, Jimmy Ray
Walker, and Wilson Whitney Walker by depositing of a copy of same in the U.S. Mail, postage
prepaid; on the date listed below addressed to their attorney of record, Gregory S. Forman,
Esquire, 171 Church Street, Suite 160, Charleston, S.C. 29401.

May 15, 2012



Everett Hope Garner &
Benjamin A. Dunn, II
HOLLER, DENNIS, CORBETT, ORMOND,
PLANTE & GARNER
1777 Bull Street
Columbia, SC 29201
(803) 765-2968
SC Bar Nos. 2332 & 12036
Attorneys for Appellant

LAW OFFICES
HOLLER, DENNIS, CORBETT, ORMOND, PLANTE & GARNER
1777 Bull Street at Laurel
Columbia, South Carolina 29201
(803) 765-2968 / Fax (803) 252-8290

J. Ed Holler
• Steven D. Dennis
Everett Hope Garner
James J. Corbett
• J. Charles Ormond, Jr.
• Anthony R. Plante
• Certified Mediator S.C.

Of Counsel
Stanley G. Freeman
—
Reply To
Post Office Box 11006
Columbia, S.C. 29211

May 15, 2012

RECEIVED

MAY 16 2012

VIA HAND DELIVERY

Ms. Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1205 Pendleton St.
Columbia, SC 29201

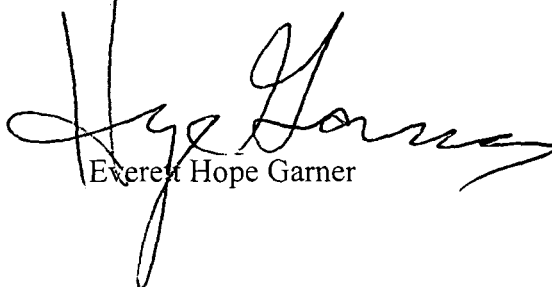
SC Court of Appeals

RE: Roger Wendell Walker, as the Personal Representative of the Estate of Kenneth Ray Walker and individually as a surviving child and Devisee of the Decedent, Kenneth Ray Walker (d/o/d 9/20/2008), Jimmy Ray Walker, and Wilson Whitney Walker as surviving children and Devisees of the Decedent, Kenneth Ray Walker, who died testate on 9/20/2008 v. Catherine W. Brooks
Case No: 2009-CP-15-1148
Case Tracking No: 2011199991

Dear Ms. Kitchings:

Enclosed please find the original and fifteen (15) copies of the Final Brief of Appellant and the original and fifteen (15) copies of the Appellant's Final Reply Brief and Proofs of Service in regard to the above referenced matter. By copy of this letter with enclosures, I am serving same upon defense counsel. Also enclosed is the original and fifteen (15) copies of the Record on Appeal. If you have any questions, please do not hesitate to contact me.

Sincerely,



Everett Hope Garner

EHG/lmk
Enclosure

CC: Gregory S. Forman, Esquire w/enclosures