

STATE OF SOUTH CAROLINA
 COUNTY OF ANDERSON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-2419

RECEIVED
 MAY 11 2018
 SC COURT OF APPEALS

Dr. Marvin Anderson

Mary Thomas and Forest Thomas, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Rodney F. Pillsbury, Esq.

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Dr. Marvin Anderson	Mary Thomas	\$125,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Dr. Marvin Anderson,)
)
Plaintiff,)

C.A. No.: 14-CP-04-2419

v.)

Mary Thomas; Forest Thomas; Prodigal)
Enterprises, LLC; Brushy Creek BarBQ,)
Inc.; and Bail Pros Bail Bonding, LLC,)

Defendants.)
)

ORDER
and RECEIVED
JUDGMENT
MAY 11 2018
SC Court of Appeals

This matter comes before the Court as a non-jury trial. On February 21, 2017, all parties consented to the trial of this case by the Court. Having heard the testimony and having carefully considered the evidence, the Court finds in favor of the plaintiff and orders judgment to be entered in his favor against Defendant Mary Thomas in the amount of One Hundred Twenty-five Thousand Dollars (\$125,000.00).

Findings of Fact

This case arises from the transfer of property from a closely-held corporation (Prodigal Enterprises, LLC) to Defendant Mary Thomas. Defendant Forest Thomas, a debtor to the Plaintiff, owned a one-half interest in the corporation at the time of transfer. In essence, with the transfer, Defendant Forest Thomas gave his *de facto* one-half interest in the property to his wife, Defendant Mary Thomas, for no consideration. Plaintiff asserts two (2) claims: (1) violation of the Statute of Elizabeth (S.C. Code §27-23-10) and (2) unjust enrichment.

The essential facts in this case are not disputed – the parties primarily disagree on the interpretation of the inferences from those facts. By clear and convincing evidence,¹ the court finds the following facts to be true and supported by the testimony and evidence admitted at trial:

- 1) In October 30, 2008, Plaintiff loaned Defendant Forest Thomas \$125,000.00. Plaintiff testified Defendant Forest Thomas needed the funds for the quick flip of a property in Florida. According to the plaintiff, Defendant Thomas agreed to pay 50% (\$62,500.00) if it took six (6) months to repay principle and interest; and 100% (\$125,000.00) if it took a year to repay principle and interest. There appears to have been no contemporaneous writing to memorialize this agreement.
- 2) As the one-year deadline was approaching, Plaintiff began contacting Defendant Forest Thomas about payment. Defendant Forest Thomas would not return calls or messages. Finally, on March 9, 2010, Plaintiff and Defendant Forest Thomas met to execute a promissory note, which Defendant Thomas freely and voluntarily signed. The terms of the note acknowledged the 2008 loan and stated the amount owed was \$181,250.00. The promissory note called for Defendant Thomas to start making monthly payments in the amount of \$34,294.71, beginning April 1, 2010.
- 3) The first payment became due but no payment was made. When the second payment (May 1, 2010) had become due and was not made, Plaintiff began calling and texting the defendant. Defendant Forest Thomas, knowing that he was already behind on payments, then looked for a way to divest himself of his major asset at the time, his

¹ Windsor Props., Inc. v. Dolphin Head Constr. Co., 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998).

interest in Prodigal Enterprises, LLC, a limited liability corporation, that he shared with his wife.

- 4) The sole asset of Prodigal Enterprises, LLC was land it owned at Highway 81 North, Piedmont, SC 29673 [hereinafter "Brushy Creek Bar-B-Q property"]. The land and the commercial building located on it was where Defendant Mary Thomas operated the family business of Brushy Creek Bar-B-Q, Inc.
- 5) By 2010, Defendants Mary Thomas and Forest Thomas were the sole members of Prodigal Enterprises. Defendant Forest Thomas was the managing member of Prodigal Enterprises, LLC. At the time of transfer to Mary Thomas, the land and building were owned free and clear of any mortgage or liability to any other third party.
- 6) In September of 2009, Defendants Forest Thomas and Mary Thomas consulted with Attorney Bill Hood to explore the possibility of transferring the title of the property to Mary Thomas in connection with her opening a bail bond business. According to the promissory note signed by Defendant Forest Thomas in March 2010, September 2009 would have been just a few weeks after the \$181,250.00 was due the plaintiff on July 30 2009. Mr. Hood testified that, while the Thomases did meet with him in September 2009, the file sat idle for several months with no activity. Indeed, it was not until late May and early June of 2010 that the Thomases had an urgent need to get the work completed.
- 7) In June 2010, the other members of Prodigal Enterprises LLC all executed satisfactions of their mortgages relating to the Brushy Creek Bar-B-Q property. Forest Thomas testified that these other parties were repaid their loans/investment years before, but they had not gotten around to do the paperwork until June 2010.

- 8) With the monthly payments on the promissory note past due and continuing to be missed, on July 7, 2010, Defendants Forest Thomas and Mary Thomas executed a series of documents that did the following:
 - a) For nominal consideration, transfer the title of the Brushy Creek Bar-B-Q property from Prodigal Enterprises, LLC to Mary Thomas. [by this transfer, Forest Thomas was, in essence, giving his wife his one-half interest in the property];
 - b) Mary Thomas filed with the Anderson Clerk of Court pledging the property as collateral for a bond company, Bail Pros; and
 - c) Effectively dissolved Prodigal Enterprises, LLC.
- 9) Mr. Thomas testified on cross-examination that at the time of this transfer, his interest in Prodigal Enterprises, LLC (with its unencumbered ownership of the Brushy Creek Bar-B-Q property) was the single largest asset he owned at that time. He also admitted this transfer was made to his wife without any consideration. Further, he admitted that following this transfer, he did not have any assets to satisfy the amounts owed to the plaintiff.
- 10) The plaintiff ultimately retained a lawyer to bring an action against Forest Thomas for collection of the promissory note. A judgment was entered in Plaintiff's favor against Defendant Forest Thomas in the amount of \$378,108.08 on March 6, 2013. Plaintiff's attempt to collect on that judgment to date have been unsuccessful. The judgment was placed in the hands of the Sheriff for collection and returned *nulla bona*. Plaintiff testified that he has never received a dime from the defendant for the original loan.

Conclusions of Law

Plaintiff brings this action with two equitable claims: (1) violation of the Statute of Elizabeth, as codified in S.C. Code Ann. §27-23-10 and (2) unjust enrichment. The court addresses the Statute of Elizabeth claim. S.C. Code Ann. §27-23-10 provides in relevant part:

Every . . . conveyance of lands . . . 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 . . . debts . . . must be deemed and taken . . . 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.

Id.

Conveyances shall be set aside under two conditions: First, where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee, even though there is a valuable consideration; and, second, where a transfer is made without actual intent to defraud the grantor's creditors, but without consideration.

McDaniel v. Allen, 265 S.C. 237, 217 S.E.2d 773 (1975). The latter situation is before this Court. However, the absence of consideration does not end the inquiry.

Where a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt.

Albertson v. Robinson, 371 S.C. 311, 317 (S.C. Ct. App. 2006), *quoting*, Mathis v. Burton, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct.App. 1995).

It is well-established that “where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.” Windsor Properties, Inc. v. Dolphin Head Construction, 331 S.C. 466, 471 (S.C. 1998), quoting, Gardner v. Kirven, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937).

Here, Defendants have failed to prove by clear and convincing evidence that the transfer was not made with fraudulent intent. The court is, in fact, satisfied by clear and convincing evidence that the transfer *did* have the intent to defraud the plaintiff as a creditor of Forest Thomas. This is primarily discernible from the timing of the transaction.

The testimony of the closing attorney (Bill Hood, a well-respected real estate attorney) was that the initial inquiry about transferring the land was raised by Defendant Forest Thomas in September/October 2009. This would have been right at the time when, according to the promissory note Forest Thomas later signed, owed the Plaintiff \$181,250.00. Mr. Hood testified that essentially nothing was done on this project for several months.

Even though Defendant Mary Thomas testified that she became fully licensed as a bail bondsman by the State of South Carolina in December 2009, it was not until June 2010 that Defendants Forest Thomas and Mary Thomas demonstrated any objective desire to transfer the property in question into her name for the purported purpose of collateralizing a bail bond business. The June 2010 timeframe exactly coincides with Plaintiff’s demand for monthly payments under the promissory note. The court does not find Defendants’ testimony and explanations to the contrary to be credible.

The Plaintiff has clearly established all of the elements set forth in Albertson v. Robinson, *supra*: (1) the grantor (Forest Thomas)² was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) Forest Thomas failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the plaintiff sought to collect the debt. Unquestionably, the Plaintiff has established that Forest Thomas' *de facto* transfer of his one-half interest in the Brushy Creek Bar-B-Q property to his wife for no consideration was a fraudulent conveyance attempting to hinder his creditor, the Plaintiff herein.

The problem the defendants have created is that they dissolved their closely-held corporation (Prodigal Enterprises, LLC) following the completion of this transaction. Historically when applying the Statute of Elizabeth, the Court will invalidate a transfer of land. In this case, the combined actions of the plaintiffs do not make the invalidation of the transfer of the property feasible.³ In lieu of returning title to the land to its pre-fraudulent transfer status, the Court recognizes that, in essence, with this transaction Defendant Mary Thomas received the use and benefit of ½ of the value of the Brushy Creek

² At trial, Defendants' counsel argued that the entity Prodigal Enterprises, LLC was not a creditor of the plaintiff, and therefore, the transaction did not qualify under §27-23-10. The transfer itself belies this argument. It defies logic that a corporation would give its only asset to a member without consideration. Defendants argued that there was no allegation to pierce the corporate veil. However, by the time the Plaintiff brought suit in 2012, and obtained a judgment in 2013, Prodigal Enterprises, LLC had been dissolved. It was dissolved on July 10, 2010 when its sole asset was given to Mary Thomas.

³ For example, the Court does not have the power to resurrect Prodigal Enterprises, LLC from the death bestowed upon it by the defendants. Further complicating a simple re-titling of the property is the fact that Defendant Mary Thomas has apparently obtained numerous bonds by and through Bail Pros Bail Bonding, LLC. Her counsel argued, without specificity or evidence, that transferring the property would have significant ramifications on these bonds. The Court is, however, cognizant that invalidating the transfer could have a disruptive effective bonds currently in place.

Bar-B-Q property for no consideration whatsoever. At trial, she testified that she has been able to write numerous bonds using the property in question as collateral.

For this reason, the Court determines that whether via unjust enrichment or fraudulent conveyance, the most appropriate relief under the unique facts and circumstances of this case, is to award a judgment to the plaintiff a monetary amount against Defendant Mary Thomas for the value of the property and the use of the property that she received from the fraudulent transfer. Section 27-23-10 envisions a money judgment as part of the equitable relief as evidenced from the allowance to invalidate any “any lease, rent, commons, or other profit or charge out of the same...” *Id.*

In reviewing the documents admitted into evidence and the testimony of the witnesses, the Court finds Defendant Mary Thomas has received the value and benefit of the transfer in amount of One Hundred Twenty-five Thousand and 00/100ths Dollars (\$125,000.00).

Accordingly, the Court finds in favor of the plaintiff and awards a judgment in his favor in the amount of One Hundred Twenty-five Thousand and 00/100ths Dollars (\$125,000.00) against Defendant Mary Thomas.

IT IS SO ORDERED, this ____ Day of April, 2017.

The Honorable J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Marvin Anderson VS Mary Thomas , defendant, et al

Case Number: 2014CP0402419

Type: Order/Judgment and Form 4

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2017-05-19 15:36:04 page 11 of 11