THE STATE OF SOTUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity for York County

Appellate Case No. 2016-000451

William G. Tucker, Respondent,

v.

Connie Lynn Batey, Appellant.

BRIEF OF APPELLANT

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
(803) 324-8100
Attorney for Appellant

TABLE OF CONTENTS

ABLE OF AUTHORITIES

CASES: SOUTH CAROLINA SUPREME COURT

CASES: UNITED STATES SUPREME COURT

CASES: UNITED STATES BANKRUPTCY COURT

CASES: MISSOURI

CASES: OKLAHOMA

CASES: OHIO

OTHER AUTHORITIES:

STATEMENT OF ISSUES ON APPEAL

I. EQUITY WILL NOT SUPPORT AN ORDER VOIDING THE ACTION SATISFYING THE MORTGAGE.

II. THE LAW RELATING TO GIFTS DOES NOT SUPPORT AN ORDER VOIDING THE ACTION SATISFYING THE MORTGAGE.

III. THE DELIVERY OF A SATISFACTION OF THE MORTGAGE MADE THE GIFT OR FORGIVENESS OF DEBT COMPLETE, EVEN IN THE ABSENCE OF A LATER RECORDATION.

STATEMENT OF THE CASE

The Respondent William G. Tucker formed a relation with the Appellant Connie Batey at the age of 69, and while his then-living wife was confined to an institution with advanced Alzheimers. Over the next period, and after the death of his wife, he made various gifts to the Appellant.

In April 2011, the Respondent Mr. Tucker purchased a townhouse in Lake Wylie, South Carolina, placing title in the name of Ms. Batey, the Appellant. The Appellant executed and delivered a Note and Mortgage to the Respondent in the amount of $225,000.00. The Appellant made approximately seven payments toward the Note and Mortgage, then stopped in March of 2012 with a balance due of approximately $220,000.00. Mr. Tucker agreed to allow her to miss payments.

In May 2012, Mr. Tucker executed and delivered to Ms. Batey a document titled "Statement of Mortgage Paid in Full." The document states that "the Mortgage on [the Property titled to the Appellant] is hereby paid in full with no other monies due to satisfy this debt."

Mr. Tucker did not record that satisfaction. On or about January 20, 2015, Mr. Tucker sent Ms. Batey a Notice of Default accelerating the balance due on the Note and Mortgage, and demanding payment. Thereafter, Mr. Tucker made demand for cancellation of the Mortgage. The Respondent filed this action to foreclose the mortgage and for a declaratory judgment that the note, mortgage and underlying debt had not been satisfied. The Appellant counterclaimed, alleging satisfaction and invoking S.C. Code §§ 29-3-310 *et seq.* for failure to record the satisfaction.

Hearing was held on December 16, 2015 before the Master in Equity for York County, sitting without a jury. By Order dated December 30, 2015 and filed January 4, 2016, the Master held for the Respondent, allowing foreclosure.

By a later Order dated January 14, 2016 and filed January 15, 2016, the Master granted foreclosure and sale of the subject real property.

By Motion served January 15, 2015 and filed January 19, 2016, the Appellant moved to alter or amend the earlier Order. That Motion was heard on February 8, 2016; the Master's Order denying that Motion was dated February 4, 2016 and filed February 9, 2016. Notice of Appeal of all the Orders was served by mailing of February 29, 2016.

ARGUMENT:

I. EQUITY WILL NOT SUPPORT AN ORDER VOIDING THE ACTION SATISFYING THE MORTGAGE.

The December Order of the Court states its finding that:

> While [Appellant's] imposition upon [Respondent] may not rise to the legal standard of undue influence or duress, it is clear from all the circumstances that [Respondent's] execution of the Statement [satisfying the debt] was the culmination of <u>his attempts</u> to preserve his relationship with the [Appellant].
>
> [RECORD ON APPEAL, ORDER of December 30, 2015, p.7; *emphasis and matter in brackets added*].

In short, the Trial Court has made no finding of wrongdoing or inequitable behavior on the part of the Appellant. The Court has, further, made no finding of any imposition upon, or failure in cognitive ability on the part of, the Respondent. [RECORD ON APPEAL, p. 3-8.] The Court's Order finds enforcement of the Statement satisfying the debt to be inequitable and rules on that basis. *Id.*

The commentators of AMERICAN JURISPRUDENCE 2D speak clearly to such a situation.

> Where the complainant seeks equitable relief from a harmful or prejudicial situation, contending that it was not entered intentionally or voluntarily, the action of the court in granting or withholding an appropriate remedy depends primarily on whether the

complaining party could have foreseen and averted the situation complained of. If the issue as to knowledge or foreseeability is determined against the complainant, equitable relief will be denied. Thus, the complainant will be barred by negligence or carelessness.
[27 AM.JUR.2D *Equity* § 47 (2002); *footnotes omitted*]

Generally speaking, a court of equity may not assume power to administer justice because of the hardship of a case or the failure of the party's remedy at law. Equity also does not relieve parties from bargains merely because they are hard, burdensome, harsh, unwise, improvident, [24] oppressive, [25] or unprofitable.
[27 AM.JUR.2D *Equity* § 48 (2002); *footnotes omitted other than those cited under their original numbers below*.]

[The Appellant would here note that the Supreme Court case cited in Footnote 25 above, *Manufacturers' Finance Co., infra*, was cited and followed by our United States Bankruptcy Court in *IN RE Dumas*, 392 B.R. 204, 208 (Bankr.S.C. 2008).]

Generally, by resort to a court of equity, relief may be had where a contract is shown to have been defectively executed, where it does not express the agreement of the parties, or where a party did not enter into it intentionally or willingly. Unless fraud, mistake, or the like is set up, however, a court of equity will not disturb contract rights as evidenced by a writing which purports to express the intention or will of the parties to the agreement.

Equity cannot make new contracts for the parties. It is not the province of equity to rewrite or abrogate contracts to protect parties from the consequences which are attendant on their voluntary abandonment of the contract and which consequences were reasonably foreseeable when the contractual obligations were assumed. Equity is not available to reinstate rights and privileges which were voluntarily contracted away, simply because

---

24 *Crabill* v *Montgomery Ward & Co.* (App, Clark Co.) 73 Ohio L.Abs. 80, 136 N.E.2d 332; *Cox* v *Freeman*, 204 Okla 138, 227 P.2d 670, 28 A.L.R.2d 1230 (stating that the general rule is that a court of equity must, when its jurisdiction is properly invoked, give full force and effect to a contract which has been voluntarily, understandingly, and fairly entered into, and which is free from fraud, accident, mistake, or other circumstance recognized as a ground for equitable relief, although the contract is harsh, unwise, or improvident).

25 *Manufacturers' Finance Co.* v *McKey*, 294 US 442, 79 L.Ed 982, 55 S.Ct. 444 (holding that the court may not modify or ignore the terms of the contract or refuse to enforce them because it considers them harsh, oppressive, or unreasonable).

the plaintiff has come to regret the bargain he or she made, and equitable relief may not be claimed because a contract is improvident, unprofitable, or harsh, or because it produces hardship.

[27 AM.JUR.2D *Equity* § 65 (2002); *footnotes omitted*]

[W]here one of two parties, both guiltless of intentional wrong, must suffer a loss, the one whose conduct, act, or omission causes the loss must stand the consequences.

[27 AM.JUR.2D *Equity* § 65 (2002); *footnotes omitted.*]

The rule stated above has been repeatedly invoked by our Appellate Courts, usually in the context (absent here) of a deed by a weak-minded person. Thus, in *Zeigler* v. *Shuler*, 87 S.C. 1, 68 S.E. 817 (1910), our Supreme Court held:

While a court of equity is not intended to protect those who make improvident or even reckless contracts, it will always interpose to shield a helpless and weak-minded person from his half-brother, such as Govan A. Shuler is shown to be, who would take his all, and pauperize him for practically nothing.

[*Id.*, 87 S.C. at __, 68 S.E. at 819; *emphasis added.*]

More closely resembling our case is that of *Pressley* v. *Kemp*, 16 S.C. 334 (1882), in which an elderly lady caused her lawyer to prepare a deed to a person with whom she lived. The Supreme Court stated:

In the case of gifts *inter vivos* it is considered by the courts of equity that the natural influence which such relations as those in question[1] involve, exerted by those who possess it, to obtain a benefit for themselves, is an undue influence. Gifts brought about by it are, therefore, set aside, unless the party benefited by it can show affirmatively that the other party to the transaction was placed 'in such a position as would enable him to form an absolutely free and unfettered judgment.' *Archer* v. *Hudson*, 7 *Beav.* 551.["] We think the

1 The *Pressley* Court cites such relations as "parent and child, man and wife, doctor and patient, attorney and client, confessor and penitent, and guardian and ward" *Id.*, 16 S.C. at 345. The Appellant again notes that, in this case, the Court has specifically ruled out undue influence.

rule, as here announced, is only applicable where there are well-defined confidential relations, such as those indicated in the cases cited.

[*Id.*, 16 S.C. at 346; *footnote added below.*]

The Appellant reiterates that there has been no evidence, and no finding that the actions of the Respondent were the result of any other than an "absolutely free and unfettered judgment".

In the absence of any wrongdoing or inequitable conduct by the Appellant, and in the absence of any hint of mental incompetence on the part of the Respondent, this Court is faced with what is, at most, the Respondent's remorse for his actions. All relevant precedent makes it clear that such remorse cannot, by itself, serve as the basis for equitable relief. The Respondent effected a gift and must live with the consequences.

II. THE LAW RELATING TO GIFTS DOES NOT SUPPORT AN ORDER VOIDING THE ACTION SATISFYING THE MORTGAGE.

The cited precedent dealing with equity is paralleled by that dealing with gift. In *Middleton* v *Suber*, 300 S.C. 402, 388 S.E.2d 639 (1990), our Supreme Court stated the rule as to a claim of undue influence in a gift by deed:

> Where . . . a "confidential relationship" exists between the grantor and grantee, the deed is presumed invalid and the burden is upon the grantee to establish absence of undue influence. *Bullard* v. *Crawley*, 294 S.C. 276, 363 S.E.2d 897 (1987).
>
> A confidential relationship arises when the grantor places trust and confidence in the grantee, and the grantee exerts dominion over the grantor. *Bullard, supra*; *Page* v. *Lewis*, 209 S.C. 212, 39 S.E.2d 787 (1946). Mere friendship is insufficient and, moreover, the relationship does not necessarily arise when the grantor depends upon the grantee for the necessities of life. Some evidence is required that the grantor reposed trust in the grantee in the handling of the grantor's affairs. *Bullard, supra* [*citing McIntosh* v. *Dowdy*, 625 S.W.2d 162 (Mo.Ct.App.1981)].
>
> [*Id.*, 300 S.C. at 405, 388 S.E.2d at 641.]

To restate: the Trial Court found no undue influence of the Respondent by the Appellant. There is no evidence of an "exertion of dominion" by the Appellant over the Respondent. There is no

evidence that the Respondent "reposed trust" in the Appellant by delivering the satisfaction of mortgage to her. In short, neither the existence of a "confidential relationship" nor a claim of "undue influence" exists to support the ruling of the lower Court.

III. THE DELIVERY OF A SATISFACTION OF THE MORTGAGE MADE THE GIFT OR FORGIVENESS OF DEBT COMPLETE, EVEN IN THE ABSENCE OF A LATER RECORDATION.

The December Order of the Court was apparently also based on the conclusion that, while the Satisfaction in question was executed and delivered to the Appellant, it lacked effect because no Satisfaction was recorded in the Office of the Clerk of Court.

This conclusion is contrary to the mass of precedent on the subject. To again quote the commentators of AMERICAN JURISPRUDENCE 2D:

> It is also a general rule that a release of the debt or other obligation secured by a mortgage operates as a discharge of the mortgage. Indeed, the rule that anything which operates to extinguish the debt necessarily operates to discharge the mortgage is generally regarded as prevailing notwithstanding the absence of a cancellation or release of the mortgage in writing.
>
> [55 AM.JUR.2D *Mortgages* § 410 (2002); *footnotes omitted.*]

The Appellant also points out that, were the above not the case, there would be no basis for the remedy allowed by S.C. Code §§ 29-3-310 *et seq*. Those Statutes recognize the existence of a mortgage satisfaction prior to, and separate from, the recordation of satisfaction proper.

Our Supreme Court, in the leading case of *Lynch* v. *Lynch*, 201 S.C. 130, 21 S.E.2d 569 (1942), has held as follows:

> The following, which is quoted with approval in the case of *Ott* v. *Ott*, 182 S.C. 135, 188 S.E. 789, 792, is an accurate statement of the essential elements of a gift *inter vivos*:
>
> > " 'A gift *inter vivos* as its name imports, is a gift between the living. It is a contract which takes place by the mutual consent of the giver, who divests himself of the thing given in order to transmit the title of it to the donee gratuitously, and the donee who accepts and acquires the legal title to it. It operates, if at all, in the

donor's lifetime, immediately and irrevocably; it is a gift executed; no further action of the parties; no contingency of death, or otherwise, is necessary to give it effect.' 28 C.J. 621, 622."

[*Id.*, 201 S.C. at ___, 21 S.E.2d at 572; *emphasis added.*]

The commentators of AMERICAN JURISPRUDENCE 2D define a gift as follows:

A gift has been judicially defined as a voluntary transfer of property by one to another without any consideration or compensation therefor.

[38 AM.JUR.2D *Gifts* § 1 (2002); *citing, inter alia,* 73 A.L.R. 1539.]

Both parties testified that nothing was promised in order to effect the execution of the document stating the Mortgage debt was paid in full. [RECORD ON APPEAL, p.182, l.21 – 25; p.192, l.24 -0.193, l.12; p.203, l.11-25.] There is no dispute that the satisfaction or notice thereof was, in fact, delivered to the Appellant. [RECORD ON APPEAL, p.199, l.2 – 6.] There is no question of the Respondent's competence to make such a gift. There is no question of undue influence.

CONCLUSION

All elements of a gift have been satisfied; the Appellant is entitled to the recognition by this Court that the mortgage was satisfied and the gift completed.

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
(803) 324-8100
Attorney for Appellant

August 2, 2017

Rock Hill, South Carolina

CERTIFICATE OF COUNSEL

The undersigned certifies that the final Briefs of Appellant comply with Rule 211(b), S.C.A.C.R.

August 2, 2017

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731-6106
(803) 324-8100
Attorney for Appellant