THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Martin R. Banks, Special Referee

Case No. 2007-CP-18-1794

James T. Judy, Bobby R. Judy and Kevin Judy,

Respondents,

v.

Ronnie F. Judy, J. Todd Judy, Ryan C. Judy and Wanda B. Judy, Defendants,

of whom Ronnie F. Judy *is*,

Appellant.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. REPLY TO RESPONDENTS' ARGUMENT II; ACTUAL MORAL FRAUD.

Respondents correctly acknowledge that actual moral fraud is a necessary element of a Statute of Elizabeth claim under the present circumstances, at least as it pertains to the bulk of the challenged transfers. It is undisputed by the Respondents that they were not the Appellant's creditors at the time of the challenged 1998 conveyances. (R.p 193 line 17, 463; Plaintiffs Exhibit 21). For subsequent creditors a conveyance may be set aside when (1) the conveyance was "voluntary," that is, without consideration and (2) it was made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors. *Mathis* v. *Burton,* 319 S.C. 261, 265, 460 S.E.2d 406 (Ct. App. 1995); citing *Gentry* v. *Lanneau,* 54 S.C. 514, 32 S.E. 523 (1899); *Parker Peanut Co.* v. *Felder,* 200 S.C. 203, 20 S.E.2d 716 (1942). The Subsequent creditors must show "actual moral fraud" rather than legal fraud. *Gentry* v. *Lanneau,* 54 S.C. 514, 32 S.E. 523 (1899). Respondents also correctly distinguish between actual moral fraud and constructive or legal fraud, the latter of which would be more correctly applied in construing whether the requisite fraud existed for setting aside the more recent conveyances.

Although the Respondents seemingly understand the standard to be applied to the 1998 conveyances, they misapply the standard. The Respondents devote a substantial amount of effort to describing the Appellant's "*animus*" in actions he allegedly took relative to the underlying tort claims and in his administration of an estate, but such "*animus*" is inconsequential in proving that the 1998 transfers were made with actual moral fraud, because ill will has nothing to do with fraud and all of the "*animus*", if any, occurred years after the challenged 1998 transfer. In fact, the record below and the Respondents' brief is nearly entirely devoid of any evidence tending to show that the 1998 conveyances were made with a view to the

debt(s) at issue herein. Instead, the Respondents advance the theory that, because they offered evidence at trial that the Appellant conveyed his interests in all of his lands in order to avoid threatened liabilities, then that alleged fraud extends and inures to be asserted by the Respondents nearly nine (9) years later. (R.pp. 184 line 18 through 185 line 7; Tr. 83: 18 to 84: 7). The Respondents seemingly ignore that alleged threatened liabilities had either lapsed or were satisfied. (R.pp 660-662, 372; Plaintiffs Exhibit 40, p. 32-34, Defendant's Exhibit 10). Moreover, to assert that the Appellant's continued use of the subject property after the conveyance and his representations to third party lenders that he continued to own the property somehow expanded and perpetuated the alleged initial fraud is without foundation. Respondents casually omit the fact that the only secured creditor they offered acknowledged that the Appellant was not the owner of the subject property. (R.pp. 137 line 18 through 138 line 16; Tr. 36: 18 to 37: 16). Respondents have offered nothing tending to show that, at the time of the 1998 conveyances, Appellant had a view to the alleged intentional torts that formed the foundation of their judgment(s) other than rank speculation that the Appellant believed he was "judgment proof". Simply put, the Respondents' proximity to the alleged fraudulent transfer is too remote and the court below erred in finding actual fraud sufficient to set aside the 1998 conveyances.

Furthermore, the Respondents seem to entirely ignore the consequences of such a ruling. In essence, it is the Respondents' contention that, if a conveyance was made with a view to avoidance of existing indebtedness, that fraud is never extinguished, even by satisfaction or lapse of the underlying debts, and can be raised in perpetuity by subsequent creditors having no privity with original creditors. The implications of such a holding are broad and stand to have

an enormous impact on heirs property. In essence, such a ruling relegates heirs property, passed down through generations, to as status of less than marketable title by leaving the door open, seemingly without end, to challenges by creditors.

II. REPLY TO RESPONDENTS' ARGUMENT III; REMEDY FASHIONED BY THE COURT.

Respondents correctly state that reformation of deeds is a well-recognized power of a Court of Equity. It is also undisputed that the Appellant has not challenged that power on appeal. However, the Respondents seek to distinguish the outcome in the within case as being a ruling having the consequence of reforming deeds instead of collaterally modifying the orders of two separate actions. Although the Respondents devote substantial effort towards defining the difference between a *nunc pro tunc* order and a reformation of a deed, the Respondents seemingly ignore that one of the 1998 deeds they sought to have set aside was not the deed that was reformed by the court below. As set forth more completely in the Appellant's initial brief, a large portion of the property "restored" to Ronnie Judy by the Court below was not the property he conveyed in the challenged 1998 conveyance, but was instead the property held by Todd Judy and Ryan Judy after partition actions had divided up the property he conveyed in the challenged 1998 conveyance. (R.pp. 307 line 20 through 309 line 9; Tr. 206 line 20 through 208 line 7). Although the Judge below did not state that he was ruling "now for then", the consequence of the remedy fashioned had the same effect. Clearly, the trial court recognized that its ruling had the effect of rendering moot the outcomes of the partition actions and, in an effort to rescue the "titles conveyed to the innocent parties in the partition actions", it fashioned a remedy modifying the partition deeds so as to reflect that the Appellant was the real party in interest in the

underlying partition actions. (R.p. 22; Order, p.16). The consequence of such reformation was to reform and modify orders and deeds of separate courts in distinct actions, over which the trial court had no jurisdiction and from which no appeal or other post-judgment motion had been taken, and to which the Appellant was not an interested party. The Respondents also seemingly ignore that, in addition to the trial court being without jurisdiction to so modify, another consequence of the remedy fashioned by the trial court would be to subject the Appellant to actions that he was determined to have no interest in and to which he did not participate in the outcome, thus depriving him of the most essential due process protections.

III. REPLY TO RESPONDENTS' ARGUMENT IV; ATTORNEYS FEES.

Although the Respondents devote a substantial effort to explaining and distinguishing bad faith and vexatious conduct in litigation as an exception to the general rule that attorney fees can only be recovered under contract or by statute, such attempts are factually and legally unsound in the present action. The Respondents make references to events that occurred prior to the commencement of the within action as evidence of the bad faith exception to the general rule that attorney fees can only be recovered under contract or by statute. Clearly, events that occurred prior to the commencement of the within action cannot form the foundation of vexatious conduct in litigation. So, the only allegation advanced by the Respondents in support of their bad faith exception that even remotely remains is the allegation concerning Todd Judy's conveyance of property during the pendency of this action to Wanda Judy. (R.pp. 435-440; Plaintiffs' Exhibit 16). However, even the Respondents acknowledge that the aforementioned conveyance was subject to the protections of the Respondents' Lis Pendens. (See S.C. Code

Ann. § 15-11-20 (1976) (any person obtaining an interest in land subject to a lis pendens is bound by all proceedings taken after the filing of the lis pendens to the same extent as if made a party to the action). That the Respondents felt compelled to seek leave to amend to achieve the same outcome as was afforded by function of the *lis pendens* scarcely rises to the level of vexatious conduct required to vary the general rule that attorney fees can only be recovered under contract or by statute. That the Respondents did not understand or appreciate the legal consequences of their *lis pendens* filing is not imputable to the Appellant and to assess attorney fees upon the Appellant under such circumstances would be manifestly inequitable given that the Respondents were adequately protected at law without needing to amend their pleadings. Moreover, although the Respondents allege that the actions of Todd Judy in conveying the property to Wanda Judy are imputable to the Appellant, there is absolutely no evidence in the record to support such a contention.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Special Referee and/or remand the case for hearings consistent with the reasons stated.

July 9th, 2012

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that the Final Reply Brief complies with Rule 211(b), SCACR.

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October 15, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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v.

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Appellant.

Of Whom: Ronnie F. Judy is Appellant

AMENDED PROOF OF SERVICE

I certify that I have served the Reply Brief of the Appellant to the Respondents, James T. Judy, Bobby T. Judy, and Kevin Judy, by depositing a copy of it in the United States Mail, postage prepaid, on May 21st, 2012, addressed to their attorney of record, Capers G. Barr, III, Post Office Box 1037, Charleston, South Carolina 29402-1037.

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June 14, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Case No. 2007-CP-18-1794

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PROOF OF SERVICE

I certify that I have served the Appellant's Final Brief, Appellant's Final Reply Brief, and an additional copy of the Record On Appeal on Respondents by depositing a copy of with Federal Express, postage prepaid, on July 11, 2012, addressed to their attorney of record, Capers G. Barr, III, 11 Broad Street, Charleston, South Carolina 29401.

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July 11, 2012