THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Judge for the 11th Judicial Circuit

Appellate Case No.: 2018-000608

Angie Delores Stokes, Candece Lorraine Stokes and Joe Murray David..... Respondent,

v.

East Chateau Land Holding, LLC and Hillcreek Farms, LLC,. ..... Appellant.

FINAL BRIEF OF APPELLANT

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April 20, 2019

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II. JUDGE BENJAMIN ERRED IN HOLDING THAT THE DEED PURPORTING TO TRANSFER THE RESPONDENT'S INTEREST IN THE SUBJECT PROPERTY IS VOID BASED ON MISREPRESENATION.

STATEMENT OF THE CASE

This is an appeal from the Order of the Honorable Judge DeAndrea Gist Benjamin of the Eleventh Judicial Circuit, Lexington, South Carolina, entered on March 8, 2018. (R. pp. 13-17). The Summons and Complaint giving rise to the action underlying this Appeal were filed by Plaintiffs East Chateau Dr. Land Holding, LLC and Hillcreek Farms, LLC (collectively hereinafter "Appellants") on January 8, 2014. Appellants requested a Declaratory Judgment to quiet title to them to 135 East Chateau Drive, West Columbia, SC 29170, (hereinafter "the subject property"), which Defendants Angie Delores Stokes, Candece Lorraine Stokes and Joe Murray David (collectively hereinafter "Respondents") contended to own. On February 19, 2014, Respondents filed an Answer with a general denial of the allegations, also seeking to quiet title to the subject property. A hearing was held on the matter on February 27, 2017. On March 8, 2018, the Honorable DeAndrea Gist Benjamin, Judge for the Eleventh Judicial Circuit, issued an Order granting Respondents quiet title to the property. On April 5, 2018, Appellants filed an appeal.

STATEMENT OF FACTS

In 2008, East Chateau Land Holdings, LLC (hereinafter Appellant East Chateau), obtained ownership of the subject property by conveyance from Albert Jerry Sanders, Jr. (hereinafter Mr. Sanders). Mr. Sanders owns East Chateau Land Holdings, LLC (Appellant East Chateau), and is not a party to this Appeal. Mr. Sanders was conveyed the property by deed from Dora Yonce and George Bradley in 2007. Dora Yonce was conveyed one-half undivided interest in the property in 2004 by deed from Elaine Bradley. George Bradley and Elaine Bradley obtained ownership of the property by deed in 1978 from P. David Beale.

On August 13, 2008, Angie Delores Stokes (hereinafter Respondent Stokes), who was sixty-four years old[1] at the time, first met Mr. Sanders, who was in his fifties, at a nightclub and became involved in a romantic relationship with him. (R. pp. 132-133). Sometime in 2011, Mr. Sanders communicated to Respondent Stokes his intentions to marry her. (R. pp. 13-17). On May 20, 2011, Respondent Stokes executed a deed that purports to transfer her interest in the subject property to herself. (R. p. 120, lines 14-25; *see also* R. p. 66). This deed purports to transfer ownership of the property from Angie Delores Stokes (Respondent) as a co-owner of East Chateau Land Holdings, LLC (Grantor/Appellant) to herself, Angie Delores Stokes (Respondent) as Grantee. (*See* R. p. 66). Respondent Stokes testified that she was unsure of how she ever obtained an interest East Chateau Land Holdings, LLC. (R. p. 121, lines 3-15). On October 5, 2011 Respondent Stokes executed a Fixed Rate Second Mortgage with MetLife Home Loans on the subject property. Respondent Stokes deposited the money received from the Fixed Rate Second Mortgage in a joint bank account, bearing hers and Mr. Sanders' name, at BB&T. (R. p. 134, lines 6-24).

Ms. Joan Sanders testified at trial that on November 4, 2011, at 135 East Chateau Drive, she witnessed Respondent Stokes execute a deed that purports to convey her interest in the subject property to Hillcreek Farms, LLC (hereinafter Appellant Hillcreek). (R. p. 110, lines 4-23). Ms. Joan Sanders notarized the deed and Mr. Carl Millwood witnessed it. (See R. p. 66). A week later, on November 11, 2011, Mr. Sander's sister, Joan Ann Sanders, met with Respondent Stokes and Mr. Sanders at a Lizard's Thicket and went over other paperwork related to a proposed marriage. (R. p. 135, lines 10-22, R. pp. 155-156, lines 25-3).

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[1] At the time, Appellant Stokes was younger than the age for Medicare eligibility and Social Security Retirement full-benefits. "The burden of proving mental incompetency is upon the one who seeks to establish it. The fact that one's mind is weakened by old age is not sufficient to show incompetency." *See Rogers v. Nation By & Through Clayton*, 284 S.C. 330, 335, 326 S.E.2d 182, 185 (Ct. App. 1985).

On January 8, 2014, Appellants filed a Summons and Complaint seeking a Writ of Mandamus and Vacate. This Complaint was amended on June 02, 2014 to include the cause of action for ejectment. A Second Amended Complaint was filed seeking to quiet title in favor of either Appellant/Plaintiff East Chateau Land Holding, LLC or Hillcreek Farms, LLC. The Respondents answered, denying that the deed conveyances occurred and alleging counterclaims of fraud and misrepresentation. (R. p. 78).

SUMMARY OF THE ARGUMENT

"There are no more well settled rules in this State than that in order to raise an issue of fraud, the facts constituting the alleged fraud, *and not merely legal conclusions*, must be clearly alleged. The facts constituting fraud must not only be alleged, but such acts of fraud must be proved. While fraud may be proved by circumstantial evidence, it must be definitely proved, and cannot be presumed." (emphasis added) *Metropolitan Life Ins. Co. v. Stuckey*, 194 S.C. 469, 10 S.E.2d 3 (1940), citing *Hall v. General Exch. Ins. Corp. of New York*, 169 S.C. 384, 388, 169 S.E. 78; *Waring v. South Carolina Power Co.*, 177 S.C. 295, 296, 181 S.E. 1. "The proof of fraud must be by clear and convincing evidence." *Rivers v. Woodside National Bank of Greenville*, 150 S.C. 45, 147 S.E. 661. In the Order, the Honorable Judge Benjamin erred in reaching mere legal conclusions and in holding the Respondents to a less strict burden of proof than required. Respondents did not provide clear and convincing evidence of a disqualifying interest of the notary public significant to the deed of conveyance of the subject property. Further, Respondent Stokes did not provide clear and convincing evidence that she did not sign the deed transferring the subject property or that she was fraudulently induced into signing the deed. Appellants ask this Court to correct these errors of law.

STANDARD OF REVIEW

In equitable actions, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). In an action at law tried without a jury, the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports them. (emphasis added) *Knox v. Bogan*, 322 S.C. 64, 66, 472 S.E.2d 43, 45 (Ct.App.1996) (*citing Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976)).

ARGUMENT

I. JUDGE BENJAMIN ERRED IN CONCLUDING THAT JOAN SANDERS WAS DISQUALIFIED FROM SERVING AS NOTARY PUBLIC TO THE TRANSACTION, THRUSTING THE LEGALITY OF THE DEED INTO QUESTION.

"The amount of the beneficial interest cannot be made a rule of law in determining whether a person is disqualified from acting as a notary in any given case." *Tuten v. Almeda Farms,* 184 S.C. 195, 192 S.E. 153 (1937). Judge Benjamin erred in concluding that Joan Sanders was a stockholder or held an interest in Hillcreek Farms, LLC, creating a disqualifying interest in her ability to serve as notary to the deed conveyance of the subject property. Ms. Joan Sanders was not a stockholder and held no interest in Hillcreek Farms, LLC. The South Carolina Supreme Court notes that what constitutes a disqualifying interest must be discussed and decided in a case to case basis. *Id.* In the present case, Respondents offered minimal evidence that Ms. Joan Sanders held an interest in Hillcreek Farms, LLC. Defendants'/Respondents' Exhibit 2 provides evidence showing that while East Chateau Dr. Land Holding, LLC had several changes of Agent or Office filed with the Secretary of State, Hillcreek Farms, LLC, has never had a change of Agent of Office. The only evidence presented by Respondents to show that Ms. Joan Sanders held an interest in Hillcreek Farms, LLC, was a document from bankruptcy proceedings filed April 5, 2010, and

signed by Mr. Albert Jerry Sanders, not Ms. Joan Sanders [and without her knowledge], an issue that is not of concern in the present case.[2] (R. p. 114, lines 3-6).

In *Franklin Sav. & Loan Co. v. Riddle* (1950)[3] the South Carolina Supreme Court quotes American Jurisprudence in part that, "inasmuch as the acknowledgment is regular and fair on its face, no hidden interest of the officer should be permitted to impeach its validity." *Franklin Sav. & Loan Co. v. Riddle*, 216 S.C. 367, 372, 57 S.E.2d 910, 911-12 (1950). This statement is in stark contrast with Judge Benjamin's conclusion of law that "Ms. Joan Sanders held an interest in Hillcreek Farms, LLC which creates a disqualifying interest of the notary public to the deed of conveyance." (R. p. 16). As in the *Franklin* case, "no improper conduct or bad faith or undue advantage is charged against the officiating Notary Public," Ms. Joan Sanders or Hillcreek Farms, LLC. Rather, Respondent Stokes alleged that she personally either didn't sign the deed of conveyance of the subject property (dated November 4, 2011) and/or in the alternative, that Ms. Joan Sanders held an interest and was thus disqualified (which Appellants have refuted above). (R. p. 125, lines 8-18). Any allegation of fraud or misrepresentation was levied only against Mr. Sanders or his sister, Ms. Joan Ann Sanders, but never against Ms. Joan Sanders—none of whom has ever been named as a party in this matter. Furthermore, at trial, Ms. Joan Sanders also testified that she was not aware she owned any interest in Hillcreek Farms, LLC, and thus could not have acted improperly, in bad faith, or gained any undue advantage, as she had no knowledge of ownership in Hillcreek Farms, LLC. (R. p. 114, lines 3-6).

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[2] *See* the Fourth Circuit's discussion of validity of a deed notarized by trustee before the grantor. ("It is well established under West Virginia law that a deed of trust acknowledged by the grantor before a trustee, acting as a notary, is valid as between the parties to the instrument 'or those purchasing with actual notice,' but invalid as against all judgments and all subsequent bona fide purchasers for value." *In re Hartman Paving, Inc.*, 745 F.2d 307, 309 (4th Cir. 1984) (citing *Tavenner v. Barrett*, 21 W.Va. 656 (1883); *Central Trust Co. v. Cook*, 111 W.Va, 637, 163 S.E. 60 (1932)).

[3] The most commonly cited and heavily relied upon case in the Order issued by The Honorable Judge Benjamin. (R. p. 13).

II. JUDGE BENJAMIN ERRED IN HOLDING THAT THE DEED PURPORTING TO TRANSFER THE RESPONDENT'S INTEREST IN THE SUBJECT PROPERTY IS VOID BASED ON MISREPRESENATION.

"In an action to cancel for fraud and misrepresentation, deed regular and valid on its face, it devolved upon the plaintiff to make the fraud and misrepresentation appear by clear and convincing evidence." *Rivers v. Woodside National Bank of Greenville et al.* 150 S.C. 45, 147 S.E. 661. (S.C., 1929). The deed under attack is regular and valid on its face, "which gives rise to the presumption that it is valid in all respects." *Id.* To attack a deed for misrepresentation it is the party seeking to void the deed, [here Respondent's], burden to prove the misrepresentation by clear and convincing evidence. *Id.* Judge Benjamin held that Respondent Stokes "signed a deed that purports to convey her interest in the subject property based on a misrepresentation that she was signing a marriage document." (R. p.16, paragraph 5). In so holding, Judge Benjamin failed to require the Respondents to establish, by clear and convincing evidence, that any misrepresentation took place during the signing of the deed.

The subject deed that purports to transfer the subject property from Ms. Angie Delores Stokes to Hillcreek Farms, LLC, witnessed and notarized by Ms. Joan Sanders, was executed on November 4, 2011 at the East Chateau Drive property, per testimony of Ms. Joan Sanders. (R. p. 110, lines 7-23). Meanwhile, the marriage documents were not signed until a week later, on November 11, 2011. In the Order, Judge Benjamin ignores this gap in dates, and writes under "Findings of Fact" that, "on November 11, 2011, Ms. Angie Delores Stokes, Joan Sanders and a third party met at Lizard's Thicket where Ms. Stokes signed a document" and "Ms. Angie Delores Stokes was told the meeting was for her to sign marriage related documents and she believed she signed a marriage related document." (R. p. 15, paragraphs 16, 17). Then, under "Conclusions of Law," she writes that "Ms. Angie Delores Stokes signed a deed that purports to convey her interest

in the subject property based on a misrepresentation that she was signing a marriage document." (R. p. 15, paragraph 1). This "Conclusion of Law" is in error, because Respondent Stokes testified that on November 11, 2011, she signed a marriage license at Lizard's Thicket with Mr. Jerry Sanders (the "third party"), and Mr. Jerry Sanders' sister, Joan Ann Sanders—not his mother. *(See* R. p. 135, lines 13-21). Thus, the meeting to sign the marriage documents did not occur until a week after the signing of the deed transferring the subject property, and no allegation of misrepresentation was made regarding that meeting.

Mr. Sanders' sister and mother both go by the name "Joan Sanders" and Respondent testified that she called them both "Joan Sanders." (*See* R. p.138, lines 2-10). Respondent's testimony was clear that Mr. Sander's sister was at Lizard Thicket during the purported misrepresentation, not his mother. (*See* R. p. 135, lines 10-23). Mr. Sanders' sister is neither the notary or the witness on the deed conveying the subject property; rather, Mr. Sanders' mother witnessed and notarized Respondent Stokes signing the deed conveying the subject property while at the subject property on November 4, 2011. (*See* R. p. 110, lines 10-23). It is also worth noting that while the deed conveying the subject property was executed and delivered on November 4, 2011 and recorded on September 25, 2012, nothing was ever said in the way of repudiation of it until February 19, 2014 when Respondent filed an Answer to the suit filed by Appellants/Plaintiffs.

Respondent Stokes did testify that while at Lizard's Thicket, she signed some paperwork that she was told were marriage documents, however, she offered no testimony or evidence that any misrepresentation happened on November 4, 2011, the signature date of the deed. Nor was any evidence presented that any misrepresentation took place involving the notary, Ms. Joan Sanders (Mother) or witness, Carl Millwood. Furthermore, the only evidence presented involving the notary of the deed, Ms. Joan Sanders, was that she was at the subject property on Chateau Drive

when the signing of the deed conveying Respondent Stokes' interest to Hill Creek Farms, LLC took place. (*See* R. p. 110). To decide in favor of Respondent Stokes and against the Appellants, it would be necessary to resolve every reasonable doubt in favor of the Respondents and against the Appellants—including that the alleged marriage papers misrepresentation alleged to have occurred on November 11, 2011 influenced Respondent Stokes to sign the deed to the subject property on an earlier date (November 4, 2011). *See Grant v. Hudson,* 192 S.C. 394, 7 S.E.2d 2 (S.C., 1940). Respondent Stokes and her counsel have merely presented arguments that failed to provide any concrete basis for a finding of misrepresentation; she has failed to prove her case by the greater weight of the evidence. Therefore, Respondents have failed to show by clear and convincing evidence that the deed to the subject property must be considered a void deed based on misrepresentation.

CONCLUSION

Because Judge Benjamin failed to require the Respondents to show that Ms. Joan Sanders held an interest Hillcreek Farms, LLC, by any standard that could be considered reasonable, her Order granting Respondents a quiet title must be reversed. Further, the Order appears to ignore the fact that the date on which Respondent Stokes alleges to have signed documents due to misrepresentation occurred a week *after* the date on which the deed to the subject property was signed. Due to these errors of law, Appellants respectfully ask this Court to reverse the Order of Judge Benjamin and for all other relief as the Court deems just and proper.

[SIGNATURE BLOCK TO FOLLOW]

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