

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Honorable Brian M. Gibbons, Circuit Judge

Case No: 2017-CP-29-01248
Appellate Case No.: 2018-002272

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SC Court of Appeals

Desa Ballard, as successor trustee of the Trust of Chris Combis Appellant,

v.

Diane Combis, Chris A. Combis, Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones Defendants.

Of whom Redding Jones PLLC, Simon John O'Brien,
and Kent D. Jones are Respondents.

INITIAL BRIEF OF RESPONDENTS

May 3, 2019



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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court correctly ruled that Appellants' civil conspiracy claim against Respondents fails because an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to a third party in the absence of an independent duty owed to such third party.
- II. As an alternative additional sustaining ground for affirming dismissal of the Appellant's claim against Respondents, whether the trial court lacked personal jurisdiction over respondents Jones and O'Brien.
- III. As an alternative additional sustaining ground for affirming dismissal of the Appellant's claim against Respondents, whether Lancaster County was an improper venue.
- IV. As an alternative additional sustaining ground for affirming dismissal of the Appellant's claim against Respondents, whether the trial court lacked subject matter jurisdiction over the action.
- V. As an alternative ground for affirming the trial court's decision to dismiss Appellant's claim against Respondents, whether Appellant's civil conspiracy claim is rendered moot by the Fourth Circuit Court of Appeals' decision in Ballard v. Combis, Case No. 16-2057, decided on January 8, 2019, in which the Fourth Circuit vacated the portion of the District Court judgment that held George Combis jointly and severally liable for breach of fiduciary duty.

STATEMENT OF THE FACTS

Appellant Desa Ballard (“Appellant”) is the successor trustee of the Trust of Chris Combis (the “Trust”) dated October 15, 2013 (the “Trust”). (R. p. ____, Complaint ¶ 1). On December 16, 2013, Appellant filed a lawsuit in Lancaster County against Diane Combis (“Diane”) and George Combis (“George”) alleging that Diane, the former trustee of the Trust, breached her fiduciary duty as trustee in transferring \$412,000 from the Trust’s assets to her joint account with George in 2007 (the “Fiduciary Duty Lawsuit”) (R. p. ____, Ballard v. Combis, Case No. 16-2057, at *5). The Fiduciary Duty Lawsuit was removed to the United States District Court for the District of South Carolina. (R. p. ____, Complaint ¶ 13). On or about July 22, 2015, George and Diane retained Joseph Pellington and David Redding, two litigators employed by Redding Jones, PLLC, to represent them in the Fiduciary Duty Lawsuit. (R. p. ____, Tr. p. 8 lines 1-2).

During the pendency of the Fiduciary Duty Lawsuit, Respondents Simon John O’Brien (“O’Brien”) and Kent D. Jones (“Jones”), who were both employed by Redding Jones at the time, each prepared a deed to transfer real property in North Carolina in which George had an interest (the “North Carolina Properties”). (R. p. ____, Complaint ¶¶ 9, 10). Appellant alleges that on or about September 22, 2015, Jones prepared and recorded a deed transferring real property in Mecklenburg County, North Carolina—referred to as the Carmel Park Property—from George to Chris Combis (“Chris”) and Chris’s then wife. (R. p. ____, Complaint ¶¶ 20-21). Appellant alleges that on or about May 19, 2016, O’Brien—an associate attorney at Redding Jones at the time—prepared and recorded a deed transferring George’s one-half interest in the “Brevard Street Property” in Mecklenburg County, North Carolina, to Diane, vesting sole interest in the Brevard Street property in Diane’s name. (R. p. ____, Complaint ¶¶ 26-28).

Following a bench trial of Appellant's Fiduciary Duty Lawsuit against George and Diane, the District Court held that Diane had breached her fiduciary duty to the Trust and that she and George were jointly and severally liable to the Trust in the amount of \$412,000, plus prejudgment interest. (R. p. ___, Ballard v. Combis, Case No. 16-2057, at *6). Redding Jones appealed that judgment on behalf of Diane and George. On January 8, 2019, the Fourth Circuit Court of Appeals vacated the portion of District Court Judge Joseph F. Anderson's judgment that held George jointly and severally liable with Diane, thereby vacating the judgment against George. (R. p. ___, Ballard v. Combis, Case No. 16-2057, at *14).

On November 17, 2017, Appellant filed the underlying lawsuit in this matter, in which she alleged that the transfers of the two North Carolina Properties are void as fraudulent transfers. (R. p. ___, Complaint ¶ 19). Appellant's underlying Complaint in this matter alleges just one cause of action against Respondents: that they engaged in a civil conspiracy "with George to assist him in transferring real property out of his name, with the intent to deprive the Trust and other creditors of sufficient assets from which to satisfy the pending judgment against George." (R. p. ___, Complaint ¶ 45). Appellant's entire Complaint is premised on the allegation that Respondents "were aware . . . of the significant likelihood that the Trust would be awarded a significant monetary judgment against George." (R. p. ___, Complaint ¶ 16). The Complaint does not allege that Respondents conspired with Diane. (*See* R. p. ___, Complaint).

Respondents moved to dismiss Appellant's claim against them on the basis that (1) attorneys are immune from liability for civil conspiracy when the conduct complained of is within the course and scope of their legal representation of their clients; (2) the trial court lacked personal jurisdiction over Respondents; (3) the venue was improper; and (4) the trial court lacked subject matter jurisdiction over the action. (R. p. ___, Tr. pp. 9-10). The trial court granted Respondents'

motion to dismiss, citing Supreme Court precedent in holding that “an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to third parties when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party.” (R. p. ___, Order Granting Motion to Dismiss pp. 1-2). As set forth in detail below, the Court should affirm the trial court’s ruling.

ARGUMENT

I. STANDARD OF REVIEW

A. Rule 12(b)(6) Standard

“A complaint may be dismissed when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action.” Disaboto v. South Carolina Ass’n of School Adm’rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013); Rule 12(b)(6), SCRPC. A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court “must presume all well-pled facts to be true.” Gressette v. South Carolina Elec. & Gas Co., 370 S.C. 377, 379-80, 635 S.E.2d 538, 538 (2006). “On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court.” Ryde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). A trial court’s grant of a motion to dismiss will be sustained when “the facts alleged in the complaint do not support relief under any theory of law.” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (2009).

II. THE TRIAL COURT CORRECTLY RULED THAT APPELLANT’S CIVIL CONSPIRACY CLAIM AGAINST RESPONDENTS FAILS BECAUSE AN ATTORNEY CANNOT ENTER INTO A CIVIL CONSPIRACY WITH ITS CLIENT WHEN ACTING IN THE COURSE AND SCOPE OF ITS LEGAL REPRESENTATION, AND IS OTHERWISE IMMUNE FROM LIABILITY TO A THIRD PARTY WHEN

ACTING IN THE COURSE AND SCOPE OF ITS LEGAL REPRESENTATION IN THE
ABSENCE OF AN INDEPENDENT DUTY OWED TO SUCH THIRD PARTY.

In granting Respondents' motion to dismiss, the trial court correctly concluded:

Plaintiff has failed to state a claim for civil conspiracy against defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones on the basis that an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to third parties when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party.

(R. p. ___, Order Granting Motion to Dismiss pp. 1-2). Appellant does not attempt to identify any conduct by Respondents that exceeds the course and scope of their legal representation of their clients and instead attempts to characterize Respondents' conduct as violating an independent duty Respondents owed to Appellant. (See Appellant's Br. p. 11). Additionally, Respondent seemingly argues against the South Carolina Supreme Court's precedent by insisting that attorneys can incur liability to a third party for civil conspiracy based on conduct that is entirely within the course and scope of their legal representation of their clients. (See Appellant's Br. p. 7). The Court should affirm the Trial Court's ruling because (1) Appellant has failed to identify any legitimate source of an independent duty owed to Appellant by Respondents; (2) Appellant's argument for a modification of South Carolina law is misplaced and unconvincing; and (3) a civil conspiracy cannot exist when the conduct challenged is an act by a single corporation acting exclusively through its employees, who are each acting within the scope of their employment.

In South Carolina, a civil conspiracy is "(1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages." Pye v. Estate of Fox, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2010). However, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C.

525, 528, 339 S.E.2d 887, 889 (1986). An attorney may be held liable for civil conspiracy only “where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). Furthermore, a civil conspiracy cannot exist when the conduct challenged is an act by “a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.” McMillan v. Oconee Memorial Hosp. Inc., 367 S.C. 559, 565, 626 S.E.2d 884, 887, (2006).

In Stiles, the Supreme Court dismissed the plaintiff’s claim for civil conspiracy against an attorney for failure to state a claim because:

Nowhere in the complaint does [plaintiff] allege in what manner [the attorney] acted outside his role as [defendant’s] attorney nor does he allege that [the attorney] breached some independent duty owed to [plaintiff]. Therefore, on the face of his complaint, the only reasonable inference is that [the attorney] was acting at all times in his capacity as [defendant’s] attorney. Under *Gaar*, [the attorney] is immune for any activities taken in his professional capacity.

Id. at 300, 457 S.E.2d at 603.

Stiles is directly analogous to the case at bar. Nowhere in Appellant’s Complaint does Appellant allege in what manner Respondents acted outside their role as attorneys for George and/or Diane or how they acted in their own self-interests. Nowhere in Appellant’s Complaint does she allege that Respondents breached some independent duty owed to Appellant or how an independent duty even exists. Preparing and recording deeds are acts squarely within the “role as attorney” that the Supreme Court stated cannot give rise to a claim for civil conspiracy against an attorney. Therefore, as the Supreme Court concluded in Stiles, the only inference that can be drawn from Appellant’s Complaint is that Respondents were acting at all times in their capacity

as attorneys. Under Gaar and Stiles, Respondents are immune from liability for any activities undertaken in their professional capacity.

On appeal, Appellant attempts to remedy the fatal flaws in her claim against Respondents by using the South Carolina Rules of Professional Conduct (the “Rules”) to try to establish that Respondents owed an independent duty. (*See* Appellant’s Br. pp. 10-11). Specifically, Appellant cites Rules 3.4(a), 4.4(a), and 8.4(d). (*See* Appellant’s Br. pp. 11-12). Appellant also cites the Preamble to the South Carolina Rules of Professional Conduct for the proposition that the Rules are relevant in establishing the duties owed by an attorney. (*See* Appellant’s Br. p. 11).

Appellant is raising this issue for the first time on appeal. This theory was never briefed, argued, or otherwise raised in any way to the trial court. Appellant is now barred from raising these new arguments due to her failure to raise them to the trial court in any form.

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004).

Setting aside the fact that this was not alleged in Appellant’s Complaint or argued to the trial court - and Respondents did not violate any of the Rules cited by Appellant - this argument is also directly undermined by a closer examination of the Rules: “Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.” Rule 407, SCACR, Scope, Section 7. The Rules themselves make clear that they do not create an independent legal duty upon which Appellant could base her civil conspiracy claim against Respondents.

In the absence of a breach of an independent duty owed to Appellant by Respondents, Appellant has failed to meet the clear standards set by the Supreme Court for when an attorney can be liable for civil conspiracy in South Carolina. The trial court correctly ruled that Appellant failed to state a claim against Respondents for civil conspiracy. Accordingly, the trial court's ruling should be affirmed.

III. ALTERNATIVE GROUNDS FOR AFFIRMING THE TRIAL COURT'S DISMISSAL OF APPELLANT'S CLAIM AGAINST RESPONDENTS

If this Court is inclined to affirm the trial court's dismissal of Appellant's civil conspiracy claim based on the immunity principles set forth Stiles and Gaar, the following alternative additional grounds are moot at this point as far as Respondents are concerned. However, if this Court is inclined to reverse the trial court's ruling based on the immunity, Respondents would ask that the Court consider the alternative grounds set forth below for affirming dismissal of Appellant's civil conspiracy claim against Respondents.

South Carolina Appellate Court Rule 208(b)(2) provides: "Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)." Rule 208(b)(2), SCACR. Rule 220(c) provides that "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. As discussed by the Supreme Court in I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000):

Under the present rules, a respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. It also could violate the principle that a court usually should refrain from deciding unnecessary questions...

The basis for respondent's additional sustaining grounds must appear in the record on appeal, but other requirements contained in former rules and pre-1990 precedent no longer apply. Of course, a respondent may abandon an additional sustaining ground under the present rules—just as a respondent could under the former rules—by failing to raise it in the appellate brief...

The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.

Id., 338 S.C. at 419-420, 526 S.E.2d at 723 (citations omitted).

Respondents' motion to dismiss, its brief in support of that motion, and the hearing transcript all properly appear in the Record on Appeal. Each of the above-mentioned documents in the Record on Appeal contain the following alternative grounds upon which this Court may affirm the trial court's ruling: (1) lack of personal jurisdiction over respondents Jones and O'Brien; (2) improper venue; and (3) lack of subject matter jurisdiction. (R. p. ____, Motion to Dismiss p. 1; R. p. ____, Brief in Support of Motion to Dismiss pp. 3-10; R. p. ____, Tr. pp. 9-10). Accordingly, this Court may affirm the trial court's ruling on the additional grounds of (1) lack of personal jurisdiction, (2) improper venue, or (3) lack of subject matter jurisdiction.

IV. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT'S RULING, APPELLANT FAILED TO ESTABLISH THAT THE TRIAL COURT PROPERLY EXERCISED PERSONAL JURISDICTION OVER RESPONDENTS JONES AND O'BRIEN.

"The party seeking to invoke personal jurisdiction against a foreign [defendant] by utilization of our long-arm statute has the burden of establishing jurisdiction." Aviation Associates and Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 505, 402 S.E.2d 177, 178 (1991). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." Coggeshall v. Reprod. Endocrine Assocs., 376 S.C. 12, 16, 655 S.E.2d

476, 478 (2007). “The decision of the trial court will be affirmed unless unsupported by the evidence or influenced by an error of law.” *Id.*

O’Brien and Jones are citizens and residents of North Carolina. (R. p. ____, Complaint, ¶¶ 9-10). O’Brien and Jones have never lived in or owned real property in South Carolina; have never held a South Carolina law license or any other South Carolina license; have never sued or been sued in South Carolina before this lawsuit; do not solicit or transact business or render services in South Carolina; do not maintain offices or employees in South Carolina; do not own, rent, lease, or otherwise use or possess any interest in real property in South Carolina; do not have a South Carolina telephone number, facsimile number, address or bank accounts; and are not registered agents for any South Carolina corporations or entities. (R. p. ____, Jones Affidavit, ¶¶ 3-5, 9-16; R. p. ____, O’Brien Affidavit, ¶¶ 3-5, 12-19).

A court will conduct a two-step analysis when determining whether it can exercise personal jurisdiction over a nonresident: “First, the trial judge must determine that the South Carolina long-arm statute applies. Second, the trial judge must determine that the nonresident’s contacts in South Carolina are sufficient to satisfy due process requirements.” Aviation Associates and Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 505, 402 S.E.2d 177, 179 (1991). Without the requisite minimum contacts, the South Carolina court is without the power to adjudicate the matter. Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

The court must also “find that the exercise of jurisdiction is reasonable or fair. If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.” *Id.* A defendant must “purposefully avail itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws.”

Aviation Assocs., 303 S.C. at 508, 402 S.E.2d at 180. South Carolina courts look at four factors when determining if the requirements of due process are satisfied: (1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State's interest in exercising jurisdiction." *Id.* To establish jurisdiction under a conspiracy theory, "it is not enough that other members of the alleged conspiracy have numerous contacts with South Carolina. Due process requires [a court] to examine each [defendant's] own contacts with South Carolina." Allen v. Columbia Financial Management, Ltd., 297 S.C. 481, 490, 377 S.E.2d 352, 356 (1988).

In Aviation Associates, the Supreme Court found that the plaintiff could not satisfy the requirement of due process. *Id.* First, the duration of the defendant's activities in South Carolina were minimal – the only conduct directed toward the state was a letter that it signed and returned at the plaintiff's request. *Id.* The Court noted that "although a single act may support jurisdiction, it must create a 'substantial connection' with the forum." *Id.* Returning one letter to South Carolina did not create such a connection. *Id.*

As an initial matter, Appellant failed to allege a basis for personal jurisdiction over Respondents Jones and O'Brien. The only statements to support purported jurisdiction over the individual Respondents (which is explicitly denied) are that O'Brien had "full knowledge that those acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust," and that Jones "knew or should have known that his acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust." (R. p. ____, Complaint, ¶¶9-10). These statements are not a proper invocation of South Carolina's long-arm statute. As best as Respondents can tell, Appellant may have intended to invoke the fourth prong of the long-arm statute, "causing tortious injury or death in this State by an act or

omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State.” S.C. Code Ann. §36-2-803.

Assuming, *arguendo*, that Appellant intended to raise this as the basis for personal jurisdiction, Appellant has still not satisfied the requirement that O’Brien and Jones have sufficient minimum contacts with the State of South Carolina to comply with due process. The contact with South Carolina that Appellant alleges as the basis for personal jurisdiction over Jones and O’Brien is the preparation and recordation of two deeds in Charlotte, North Carolina, for North Carolina residents, concerning North Carolina properties. Therefore, the duration of Respondents’ activities in South Carolina is non-existent, and the character and circumstances of Respondents’ acts reveal a complete lack of any purposeful availment of the privilege of conducting activities within South Carolina. Furthermore, the inconvenience to the parties is considerable given that Respondents, potential witnesses, and relevant records are all in North Carolina. Finally, South Carolina’s interest in exercising jurisdiction over a case that alleges North Carolina attorneys participated in an unethical, fraudulent conveyance of real property situated in North Carolina for North Carolina residents is slight in comparison to North Carolina’s interest in exercising jurisdiction. Therefore, the trial court’s decision to dismiss Appellant’s claim against respondents Jones and O’Brien may be affirmed on the ground that the trial court lacked personal jurisdiction over Jones and O’Brien.

V. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT’S RULING, APPELLANT FAILED TO ESTABLISH THAT LANCASTER COUNTY IS A PROPER VENUE FOR THIS ACTION

There is no proper venue in the State of South Carolina for this action. The Code of Laws of South Carolina §15-7-10 provides in relevant part:

an action...must be tried in the county in which the subject of the action or some part of the property is situated...(1) for the recovery of real property or of an estate or interest in real property, for the determination in any form of the right or interest, and for injuries to real property.

S.C. Code Ann. § 15-7-10 (emphasis added). This section applies to “any action that requires a determination in any form of such right or interest in real property.” Truck South, Inc. v. Patel, 339 S.C. 40, 45, 528 S.E.2d 424, 427 (2000). “[T]he character of an action is primarily determined by the allegations of the complaint.” Id. at 46, 528 S.E.2d at 427.

In Truck South, plaintiff Truck South argued that venue was proper in the county where the property was situated pursuant to §15-7-10. Id. at 45, 528 S.E.2d at 427. Truck South requested specific performance of a contract whereby the defendant was to make payment in installments to Truck South and, upon satisfaction, receive title to the subject land. Id. at 43, 528 S.E.2d at 426. The Court of Appeals found that Truck South was “not asking the court to determine its right in the real estate, but is simply seeking the money due under the contract,” and determined that §15-7-10 did not apply. Id., 528 S.E.2d at 428.

The Supreme Court, however, disagreed. Id. In reviewing the Amended Complaint, the Supreme Court noted that Truck South’s allegations sought to require

[defendant] Patel to specifically perform under the contract, money damages were only requested in the alternative. While transfer of money would occur if specific performance was ordered, Truck South’s request is not solely for a money judgment, it is an action to compel Patel to perform so that title, an interest in the real estate, can transfer.

Id. The Supreme Court noted:

[S]trong public policy supports a rule that requires an action for the specific performance of a land sales contract to be litigated in the county where the land is located. That is where the records are located, where the title is recorded, where *lis pendens* are filed, and where the actual property is situated.

Id. Accordingly, the Court found that §15-7-10 applied, and that it was “more reasonable...to have a rule where actions involving real estate are local actions that are litigated in the county where the land is situated.” Truck South, 339 S.C. at 47-48, 528 S.E.2d at 428.

Here, in the Prayer for Relief, Appellant requested an entry of judgment as follows:

B. Declaring the purported transfer [of] George’s interest in the Brevard Street property was void *ab initio*, and title of a one-half undivided interest in the property remains in George’s name.

C. Declaring the purported transfer of George and Diane’s interest to Chris of the Carmel Park property was void *ab initio*, and title remains in George and Diane’s name.

(R. p. __ Complaint, p. 12). Secondly, Appellant prayed that to the extent a transfer of property cannot be set aside, that Diane and/or Chris Combis pay to the Court “the fair market value of the property so conveyed....” Id. This is analogous to Truck South – Appellant’s prayer for relief “is not solely for a money judgement, it is an action to compel...so that title, an interest in the real estate, can transfer.” Truck South, 339 S.C. at 46, 528 S.E.2d at 427-428. Appellant asked the trial court to declare that any transfer of title to the property is void, so that title will remain in the original interest owner’s name. In the event that the trial court could not set aside the transfer, the payment of fair market value for the property to Appellant is merely an “accompaniment” and “does not alter the true nature of the lawsuit.” Id. Venue is not proper in Lancaster County, nor anywhere in the State of South Carolina, and accordingly, the Court may affirm the trial court’s decision on the ground that venue was improper.

VI. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT’S RULING, APPELLANT FAILED TO ESTABLISH THAT THE COURT OF COMMON PLEAS IN LANCASTER COUNTY PROPERLY EXERCISED SUBJECT MATTER JURISDICTION OVER THE ACTION.

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” Gantt v. Selph, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018). Lack of subject matter jurisdiction may be raised at any time, “and may be raised for the first time on appeal.” Id. at 338, 814 S.E.2d at 525-26. The question of subject matter jurisdiction “is a question of law.” Id. “An appellate court may decide questions of law with no particular deference to the trial court.” Id.

A South Carolina court “has no jurisdiction to try the cause on its merits in the wrong county.” Ex parte Jones, 160 S.C. 63, 158 S.E. 134, 137 (1931). As discussed above in Section IV, an action that requires a determination in any form of a right or interest in real property “must be tried in the county in which the subject of the action or some part of the property is situated.” S.C. Code Ann. § 15-7-10 (emphasis added); Truck South, 339 S.C. at 45, 528 S.E.2d at 427 (2000).

The trial court did not have subject matter jurisdiction over Appellant’s claim against Respondents because Lancaster County is the “wrong county” in which to bring this lawsuit. There is no county within South Carolina that has subject matter jurisdiction over Appellant’s claim against Respondents because the real property that is the subject of the action is located in North Carolina. Because South Carolina law states that Appellant’s claim must be tried in the county where the real property is situated, there is no court within South Carolina that has the authority to exercise subject matter jurisdiction over Appellant’s claim. Appellant has therefore failed to establish subject matter jurisdiction and this Court may affirm the trial court’s decision on the ground that the trial court lacked subject matter jurisdiction.

VII. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT’S RULING, APPELLANT’S CIVIL CONSPIRACY CLAIM AGAINST RESPONDENTS IS RENDERED MOOT BY THE FOURTH CIRCUIT COURT OF APPEALS’ DECISION IN BALLARD V. COMBIS, CASE NO. 16-2057, DECIDED ON JANUARY 8, 2019, IN WHICH THE COURT VACATED THE PORTION OF

THE DISTRICT COURT JUDGMENT THAT HELD GEORGE COMBIS JOINTLY AND SEVERALLY LIABLE FOR BREACH OF FIDUCIARY DUTY.

In the Fourth Circuit Court of Appeals case included in the Record on Appeal by Appellant that was decided after the Honorable Judge Gibbons entered his November 6, 2018 Order dismissing Appellant's claim against Respondents, the Fourth Circuit reversed the District Court's ruling that George was jointly and severally liable for the judgment entered against Diane for breach of fiduciary duty: "Ballard's argument attempts to stretch the court's inherent powers too far, and we find it unpersuasive. Accordingly, we vacate the portion of the district court's order holding George jointly and severally liable with Diane for Diane's breach of fiduciary duty." (R. p. ___, Ballard v. Combis, Case No. 16-2057, at *14). The Fourth Circuit issued its decision on January 8, 2019. With the judgment against George having been vacated, Appellant is actually in a better position as a judgment creditor than it would have been had George's one-half interest in the Brevard Street Property in Mecklenburg County, North Carolina, not been transferred to Diane.

South Carolina courts "only consider cases presenting a justiciable controversy." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25 630 S.E.2d 474, 477 (2006). A justiciable controversy "exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract." Id. A moot case "exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." Id. at 26, 630 S.E.2d at 477. If there is no actual controversy, a South Carolina court will not decide moot or academic questions. Id.

The basis for Appellant's claim against Respondents is that they engaged in a civil conspiracy "with George to assist him in transferring real property out of his name, with the intent to deprive the Trust and other creditors of sufficient assets from which to satisfy the pending

judgment against George.” (R. p. ____, Complaint ¶ 45). Appellant’s entire Complaint is premised on the allegation that Respondents “were aware . . . of the significant likelihood that the Trust would be awarded a significant monetary judgment against George.” (R. p. ____, Complaint ¶ 16). The Complaint does not allege that Respondents conspired with Diane. (*See* R. p. ____, Complaint). Now, on appeal, Appellant argues that “Respondent lawyers knowingly assisted Defendants in transferring and receiving assets for the purpose of secreting their assets against collection of the judgment that was eventually entered against Defendant Diane Combis.” (*See* Appellant’s Br. p. 1). Appellant did not argue that Respondents engaged in a civil conspiracy with Diane in her Complaint, her brief in opposition to Respondents’ Motion to Dismiss, or at the October 29, 2018, hearing before the Honorable Brian M. Gibbons. (*See generally* R. p. ____, Complaint; R. p. ____, Memorandum in Opposition to Motion to Dismiss; R. p. ____, Tr.).

Appellant is now barred from arguing that Respondents conspired with Diane due to her failure to raise this argument to the trial court in any form.

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004). Because Appellant may only properly argue that Respondents conspired with George, her claim is moot.

Because George is not liable for the payment of any judgment to Appellant, Appellant’s argument that Respondents conspired with him “in transferring and receiving assets for the purpose of secreting their assets against collection of the judgment” is moot. There would be no practical legal effect of a ruling that Respondents conspired with George to help him avoid payment of a judgment that he has no obligation to pay. Therefore, there is no real, substantial controversy for

this Court to resolve. Accordingly, this Court should affirm the trial court's decision on the grounds that Appellant's appeal is moot.

CONCLUSION

For the reasons stated above, the trial court's dismissal of Appellant's civil conspiracy claim against Respondents should be AFFIRMED.

Respectfully submitted, this 3rd day of May, 2019.



Edward B. Davis (S.C. State Bar No. 16713)
Attorney for Respondents

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

RECEIVED
MAY 06 2019
SC Court of Appeals

Desa Ballard, as successor
Trustee of the Trust of
Chris Combis,

Appellant,

v.

Diane Combis, Chris A. Combis,
Redding Jones PLLC, Simon John O'Brien,
And Kent D. Jones,

Defendants.

Of whom

Redding Jones PLLC, Simon John O'Brien,
And Kent D. Jones are

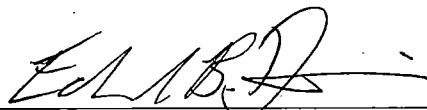
Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal on Appellant Desa Ballard, as successor trustee of the Trust of Chris Combis, by depositing a copy of the same in the United States Mail, postage prepaid on May 3, 2019, addressed to her attorney of record, Douglas N. Truslow, Esquire, at P.O. Box 1465, Columbia, South Carolina 29202, on Defendant Diane Combis at 8707 Lake Challis Lane,

Charlotte, North Carolina 28226, and on Defendant Chris A. Combis at 2310 North Brevard Street,
Charlotte, North Carolina 28206.

This the 3rd day of May 2019.



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May 3, 2019

Via FedEx

The Honorable Jenny Abbott Kitchings
Clerk of SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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MAY 06 2019
SC Court of Appeals

Re: *Desa Ballard v. Diane Combis, et al.*
Appellate Case Number: 2018-002272

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the *Initial Brief of Respondents*, the *Designation of Matter to be Included in the Record on Appeal*, and the *Proof of Service* for filing in the above referenced case. Please return file-stamped copies to me in the self-addressed, stamped envelope included herein.

By copy of this letter, I am serving the same on opposing counsel, as well as Diane Combis and Chris A. Combis as they are appearing pro se.

Sincerely,

BELL, DAVIS & PITT, P.A.

Edward B. Davis

EBD/src
Enclosure(s)

Cc: Douglas N. Truslow, Esq.
Diane Combis
Chris A. Combis

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SUSANNAH COOK

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UNITED STATES US

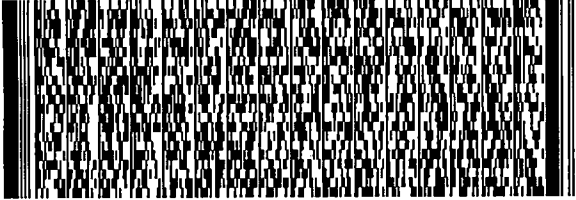
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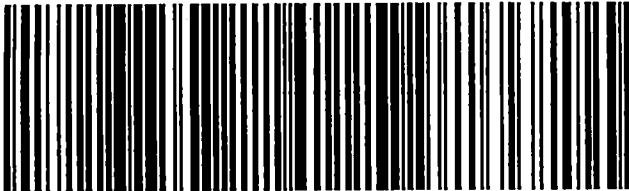
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SC Court of Appeals