

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2019-CP-11-00514

Shanna Rene Ingle, as the
Personal Representative of the
Estate of Gladys B. Potter,

Plaintiff,

v.

Shayan Investments Gaffney, LLC
and Payvand Investment, LLC,

Defendants.)

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DEC 21 2020

SC Court of Appeals

JUDGMENT

FILED IN THE OFFICE
CLERK OF COURT
2020 NOV 18 A 11:54
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

This matter came before the Court on October 26, 2020 pursuant to two (2) motions filed by Plaintiff. The Plaintiff appeared through her attorney William G. Rhoden of the Cherokee County Bar. Both Defendants appeared through their attorney Alexander D. Paterra.

Plaintiff's first motion is to substitute the estate of Gladys B. Potter as the Plaintiff. Attached to Plaintiff's motion is a Certificate of Appointment issued by the Probate Court for Cherokee County appointing Shanna Rene Ingle as the Personal Representative of the estate of Gladys B. Potter. The Defendants did not oppose Plaintiff's motion to substitute. Therefore, the Court finds Shanna Rene Ingle, as Personal Representative of the estate of Gladys B. Potter, should be substituted as the Plaintiff in this matter.

Plaintiff's second motion is for judgment on the pleadings. Plaintiff filed her action on July 18, 2019. In her action, Plaintiff alleges three (3) causes of action. First, Plaintiff alleges Defendant Shayan Investments Gaffney, LLC violated the Statute of

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Elizabeth, S.C. Code Ann., Section 27-23-10 (2007) when Defendant Shayan Investments Gaffney, LLC conveyed numerous pieces of real property to Payvand Investment LLC by deed dated January 9, 2018 and recorded in Deed Volume 100, at Page 946. The deed in question was attached to Plaintiff's Complaint as an exhibit. The Plaintiff alleges the transfer to be a fraudulent transfer within the meaning of the Statute of Elizabeth as an attempt to avoid Plaintiff's judgment lien which she obtained on February 27, 2018 (2017-CP-11-330). The Plaintiff in her Complaint seeks to set aside the transfer and for a declaration that Plaintiff's judgment lien attaches to the real property set forth in the aforereferenced deed. In Plaintiff's second cause of action, Plaintiff seeks the same relief, but under a different legal theory. Plaintiff asserts Shayan Investments Gaffney LLC and Payvand Investments LLC are both single member LLCs with Shahram Lalianpour being the sole member of each. Plaintiff alleges the two (2) LLCs are merely the alter ego of each other. The Plaintiff's third cause of action was for execution of her judgment by seizure and sale of the property.

On September 19, 2019 Alexander D. Paterra appeared for both Defendants and filed a copy of the Notice of Appeal which was filed whereby Defendant Shayan Investments Gaffney, LLC appealed the judgment Plaintiff obtained on February 27, 2018. No other responsive pleadings were filed. It should be noted at the hearing on these motions Alexander D. Paterra clarified that he had appeared for both Defendants and the filing of the copy of this Notice of Appeal was for both Defendants.

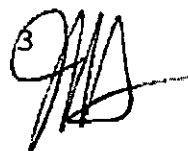
Plaintiff argues in her motion that the Notice of Appeal is not a proper pleading and is not an answer under Rule 8(b), SCRPC. Plaintiff further argues even if the Notice of Appeal is construed as a responsive pleading, it is not effective on behalf of

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Payvand Investments, LLC since Payvand Investments, LLC was not a party to the case being appealed. Further, the Notice of Appeal sets forth no denials or defenses.

In response to Plaintiff's motion for judgment, the Defendant asserts the current case is stayed by the appeal of the Plaintiff's judgment in 2017-CP-11-330. Defendant bases his argument on the automatic stay language of Rule 241(a), SCACR. Rule 241(a) provides that the service of a Notice of Appeal acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered. The Plaintiff argues that the judgment obtained in 2017-CP-11-330 is a money judgment and therefore falls under the exception of Rule 241(b)(1). Rule 241(b)(1) references S.C. Code Ann. Section 18-9-130, which provides as follows: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment obtained grants a stay of execution." Plaintiff asserts the burden is on Shayan Investments Gaffney, LLC to obtain a stay and no stay has been issued.

Plaintiff has filed her motion for judgment on the pleadings pursuant to Rule 12(c), SCRCPP. Any party may move for a judgment on the pleadings. When considering such a motion, the Court must regard all properly pleaded factual allegations as admitted. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E. 2d 338 (1991). On review of the motion, the Court may not consider matters outside the pleadings. *Firemen's Inc. Co. v. Cincinnati Ins. Co.* 302 S.C. 234, 394 S.E. 2d 855 (Ct. app. 1990). The Plaintiff has alleged causes of action to set aside the conveyance of certain property and for the declaration that Plaintiff's judgment is a lien against the property. The Defendant has not filed any responsive pleadings in the form of a denial of the allegations alleged by Plaintiff nor any

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defense. The Defendant has only filed a copy of the Notice of Appeal.

The Defendant relies solely on the argument that the Notice of Appeal would stay the current proceeding.

The plain language of Rule 241(b), SCACR and S.C. Code Ann., Section 18-9-130 do not support Defendant's argument. The automatic stay under Rule 241(b), SCACR does not apply to the judgment rendered in 2017-CP-11-330 since it is a money judgment. Under S.C. Code Ann. Section 18-9-130, the burden would be upon Defendant Shayan Investments Gaffney, LLC to obtain a stay in the lower court. No stay has been obtained. Since no stay exists, Plaintiff's action against Shayan Investments Gaffney, LC and Payvand Investment, LLC could properly proceed. The Court finds Plaintiff's motion for judgment on the pleadings should be granted.

Finally, Plaintiff has advised the court that Plaintiff does not seek execution on its judgment at this time.

IT IS THEREFORE ORDERED, that Plaintiff's motion to substitute the Estate of Gladys B. Potter as the Plaintiff be and hereby is GRANTED. Therefore, the caption is amended accordingly.

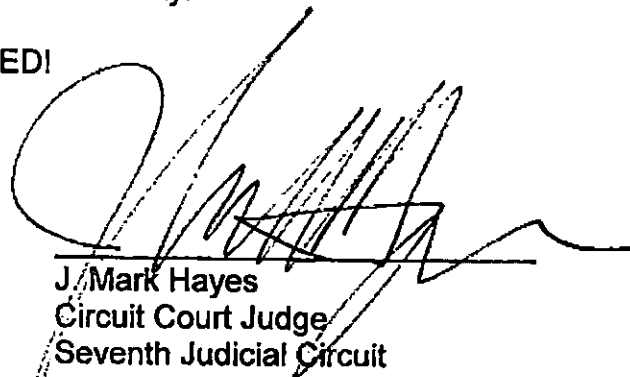
IT IS FURTHER ORDERED, that Plaintiff's motion for judgment on the pleadings be and hereby is GRANTED.

IT IS FURTHER ORDERED, that Defendant Shayan Investments Gaffney LLC's conveyance to Payvand Investments, LLC of the property set forth in the deed from Shayan Investments Gaffney LLC to Payvand Investments, LLC dated January 9, 2018 and recorded in Deed Volume 100 at page 946 in the Register of Deeds office for Cherokee County is declared void as a fraudulent transfer under S. C. Code Ann., Section

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by several vertical strokes, possibly representing the name 'Shayan'.

27-23-10 (2007). Therefore, Plaintiff's judgment rendered in case No. 2017-CP-11-330 is declared to be a lien against said property. A copy of this judgment shall be recorded in the Register of Deeds office for Cherokee County.

AND IT IS SO ORDERED!



J. Mark Hayes
Circuit Court Judge
Seventh Judicial Circuit

Gaffney, South Carolina
11/12, 2020.

FILED IN THE OFFICE
CLERK OF COURT
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BRANDY W. MCBEE
CHEROKEE COUNTY, SC