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Jan 20 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Charles B. Simmons, Master in Equity

Appellate Court Case No.: 2020-000396

Terrance "Terry" Carroll, Appellant,

v.

Debra Mowery, TD Realty, Upstate RE Group,
Hawk Shadow Business Services, LLC, and Debra Mower Realtor, Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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January 20, 2021.

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CERTIFICATE OF SERVICE

I certify that on January 20, 2021, I served the Initial Reply Brief on the Respondent by
delivering a copy AIS email to counsel of record and others as indicated below:

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Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT

**I. SUFFICIENT EVIDENCE OF CONSTRUCTIVE FRAUD EXISTS TO
OVERCOME NON-SUIT..... 1**

CONCLUSION..... 2

TABLE OF AUTHORITIES

Cases

Designer Showrooms v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991). 2

ARGUMENT

I. SUFFICIENT EVIDENCE OF CONSTRUCTIVE FRAUD EXISTS TO OVERCOME NON-SUIT.

Respondent's argument is misleading as to Carroll's testimony about titles to the investment properties in South Carolina. While the testimony shows that Carroll was aware that at closings that properties were placed in Mowery's name at the closings, it also shows that he was led to believe by Mowery that they would then be transferred into the name of TD Realty which had been formed by the parties for that purpose. (T. 34, 11-17). Carroll testified that the purchase of the properties followed by his renovations were part of a joint plan to build retirement equity for the parties, and that after their purchase the properties would then be transferred to TD Realty. Carroll's testimony also indicates that he believed that the properties had actually been transferred as he testified that he only learned that they had not during the litigation. (T. 34, l. 15-17; T. 72).

Respondent's argument is also misleading in stating that Carroll "admitted that he is not an owner of the business." Carroll's testimony to which Respondent cites actually reads: "And that was the whole reason why we put it and we started the TD Realty to put all of these -- all of these business houses were supposed to be put in that company name. And I was supposed -- it was Terry/Debra. I was supposed to be on there and I just found out that I'm not even listed as an owner on that business." T. p. 34, l. 12-17. It was not until Carroll received discovery in the present case that he learned he was held no interest or position with TD Realty. So at all times relevant to Mowery's deception Carroll was unaware that the titles had not been transferred into a company he was led to believe he in part owned. And while true that the deeds were part of

public record Carroll relied on Mowery's representations and therefore would have had no reason to search the public records.

As to Respondent's constructive notice argument the Respondent has cited no law, and Appellant submits there is none, to support Respondent's argument that there was any legal duty on the part of Carroll to inspect the public records that would override his unfortunate reliance on Mowery's misrepresentations. Mowery was in a position of trust and confidence such that Carroll's reliance on her can not be shown to be unreasonable. *See Designer Showrooms v. Kelley*, 304 S.C. 478, 480-81, 405 S.E.2d 417, 419 (Ct. App. 1991).

II. RECORD SHOWS APPELLANT EARNED SUBSTANTIAL INCOME

Respondent's claim that Carroll had no income and was supported by Mowery are unsupported by the record. The record shows that Carroll had substantial income during the relevant period. Carroll put the proceeds from the \$42,000 sale of his 53 foot Hatteras motoryacht into the joint account which was used to purchase materials used in the renovation of the Linda Lane property. 42; 74-75. In approximately 2012 Carroll received a settlement close to \$118,000 for his injuries. 17. Carroll deposited half of the settlement money into his checking account and half into a savings account, both in his name. 17. Within a month Carroll withdrew about \$60,000 cash which he put into a joint safety deposit box at MBRS. 17. Carroll used the remaining funds from his settlement to pay off the \$31,000 mortgage on the Maryland home. 22; 206. Carroll also purchased windows for the addition to Linda Lane property from the proceeds from the sale of a boat. (T. 42, l. 8-11). He also put \$5,000 into Hawk Shadow and \$5,000 into his boat rental business. 22; 206. Quinn testified that most of Carroll's money went into the parties' businesses. 87. The parties had a joint account at BB&T (8910) in the name of "Debra

Mowery and Terence Carroll, that they used to purchase South Carolina properties. 26; 109; 208-210; 225; P. Ex. 1. Respondent's claim as to Carroll's lack of income is therefore contrary to the record.

In addition to the foregoing, Mowery's claims that during the relevant period the parties' had joint living expenses of \$402,000, of which the Carroll's equal share would have been \$201,000 and that she paid all of that. (Resp Brief pg. 12). The record however shows that Mowery's disposable income from all of her claimed sources show that she did not have disposable income sufficient to pay over \$402,000 as she alleges. (T. 140-142; D. Ex. 18). Mowery's allegations, and the trial court's findings are there unsupported by the record.

Conclusion

Based on the foregoing the decision of the trial court should be reversed and the case remanded for a finding as to damages or in the alternative that damages be awarded by this Court based on the record presented.

Respectfully submitted,

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