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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Tracking No. 2018-00875

Opinion No. 2021-U P-088

Dr. Marvin Anderson, Respondent.

v.

Mary Thomas; Forest Thomas; Prodigal Enterprises, LLC; ; Brushy Creek BBQ, Inc. ; and Bail
Pros Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Appellant,

PETITION FOR REHEARING

March 29, 2021



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TABLE OF CONTENTS

Table of Authorities..... 3

1. The transfer of the Hwy. 81 property by a non-judgment debtor cannot be a
fraudulent transfer..... 4

2. The Appellant cannot unjustly enriched by a transfer of property from a
non- judgment debtor..... 5

Conclusion..... 6

TABLE OF AUTHORITIES

CASES

Barrett v. Miller, 283 S.C. 262, 321 S.E.2d 198 (Ct. App. 1984)..... 5

Columbia Wholesale Co., Inc. Scudder May N.V., 440 S.E.2d 129, 312 S.C. 259 (S.C. 1993)..... 5

Ellis v. Smith Grading and Paving, Inc., 366 S.E.2d 12, 294 S.C. 470 (1993)..... 5

Player v. Chandler, 299 S.C. 101, 382 S.E. 2d 891 (1989)..... 5

Webb v. First Federal Savings and Loan Ass'n., 300 S.C. 507,
388 S.E.2d 823 (Ct. App.1989)..... 5

STATUTES

South Carolina Code of Laws § 33-44-201 (2006)..... 4

South Carolina Code of Laws §33-41-501(a) (2006 & Supp. 2012)..... 4

As authorized by the *South Carolina Appellate Court Rules*, Rule 221 and 240, the Petitioner moves for Reconsideration of the court's Opinion No. 2021-UP-088, filed March 17, 2021. The Petitioner respectfully submits that while the Court of Appeals correctly stated the law regarding fraudulent transfers and unjust enrichment, the laws were mis-applied. In the Opinion under review, the Court affirms the Trial Court's decision on two principal grounds:

1. The transfer of the Highway 81 property to Appellant was fraudulent under the Statute of Elizabeth; and,
2. The resulting transfer unjustly enriched the Appellant;

1) The transfer of the Hwy. 81 property by a non-judgment debtor cannot be a fraudulent transfer.

As to the first, the Court grounds its opinion principally upon the conclusion that a limited liability company is synonymous with one of its members. However, a limited liability company is a distinct and separate legal entity ["a limited liability company is a legal entity distinct from its members." S.C. Code Ann. § 33-44-201 (2006). "A member is not a co-owner of, and has no transferable interest in, property of a limited liability company." S.C. Code Ann. § 33-44-501(a) (2006 & Supp.2012). *See also* Comment to S.C. Code Ann. § 33-44-501 ("Members have no property interest in property owned by a limited liability company.")]]. The Respondent did not hold a judgment against the limited liability company. The limited liability company owned the Highway 81 real estate. Therefore, the Statute of Elizabeth does not apply to the transfer.

2) The Appellant cannot unjustly enriched by a transfer of property from a non- judgment debtor.

In addition to finding a limited liability company is legally synonymous with one of its members, the Court's conclusion that Appellant was unjustly enriched by a transfer from a non-judgment entity, and not the Respondent, is also a misapplication of the law.

Respondent holds a judgment against Forest Thomas, Appellant's husband. Forest held no legal interest in the Highway 81 property owned by the limited liability company. The transfer of that property to Appellant by an entity, legally distinct in every way from Forest, cannot serve as the basis of unjust enrichment. "Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. *Ellis v. Smith Grading and Paving, Inc.*, 366 S.E.2d 12, 294 S.C. 470 (S.C. App., 1988) citing *Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App.1984). "This Court has recognized *quantum meruit* as an equitable doctrine to allow recovery for unjust enrichment." *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 440 S.E.2d 129, 312 S.C. 259 (S.C., 1993); See also *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989). "Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Id.* citing *Webb v. First Federal Savings and Loan Ass'n.*, 300 S.C. 507, 388 S.E.2d 823 (Ct. App.1989); *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct. App.1988).

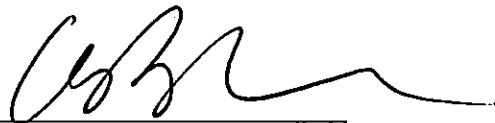
Here, there was no benefit conferred by Respondent (plaintiff) on Appellant (defendant). For unjust enrichment or *quantum meruit* to apply, Respondent is required to prove that he has conferred a benefit upon Appellant. That was not done. There is no evidence that Respondent conferred any benefit on the Appellant. Yet the Court finds that a “preponderance of the evidence supports the trial court’s determination that (Appellant) was unjustly enriched by the property transfer.” The property transfer was conferred upon Appellant by a limited liability company, not the Respondent. Finding that the transfer conferred an unjust enrichment upon appellant at the expense of the Respondent was a misapplication of the law.

Conclusion

This Court has made the same mistakes as the trial court. First, it conflated two legally distinct entities in finding clear and convincing evidence of a fraudulent transfer. Second, the Court found that the transfer of the property by a limited liability company to Appellant was the legal equivalent of Respondent transferring the property. Both conclusions were error. Therefore, the Petitioner respectfully requests that this case be set for oral argument and that this court rehear the case and reverse the decision of the trial court.

Respectfully submitted,

March 29, 2021



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The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-04-2419
Appellate Tracking No. 2018-00875
opinion no. 2021-UP-088

Dr. Marvin Anderson, Respondent.

v.


Mary Thomas; Forest Thomas; Prodigal Enterprises, LLC; ; Brushy Creek BBQ, Inc. ; and Bail Pros
Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Appellant,

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Respondent, Dr. Marvin Anderson by depositing a copy of the same in the United States Mail, postage prepaid, on March 29, 2021 addressed to his attorney of record, Rodney F. Pillsbury, Esq, 301 Rutherford St., Greenville, SC 29609.

March 29, 2021


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March 29, 2021

The Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29201

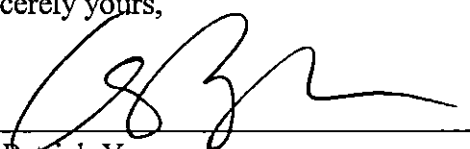
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RE: Dr. Marvin Anderson v. Mary Thomas
Appellate Case No. 2018-000875
Opinion no. 2021-UP-088

Dear Ms. Kitchings

Enclosed please find the original and seven copies of the Appellant's Petition for Rehearing along with a Proof of Service. Please return a clocked-in copy to me in the envelope provided. By copy of this letter I am serving a copy on counsel for Respondent, Rodney F. Pillsbury. I've also enclosed a check for \$50.00.

Sincerely yours,



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enclosures

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