

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

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

Appellant,

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JUN 27 2019

SC Court of Appeals

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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The Trial Court Erred In Dismissing The Claim Against Respondent Lawyers Because Existing Precedent Does Not Address A Situation In Which The Lawyers Knowingly Assisted The Client In Hiding Assets While Also Defending The Client Against The Civil Matter Which Resulted In The Judgment They Were Attempting To Insulate The Client Against.

STATEMENT OF THE CASE

On November 17, 2017 Appellant Desa Ballard (hereafter “Ballard”) filed her complaint against, *inter alia*, Respondents, Redding Jones PLLC, Simon John O’Brien, and Kent D. Jones (hereafter “the Respondent lawyers”), who are lawyers in a law firm who represented Defendants Diane Combis and Chris Combis in civil matters brought by Ballard¹. While representing the Defendants, 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.

On October 29, 2018 a hearing was held before the Honorable Judge Brian Gibbons on the Respondent lawyers’ motion to dismiss. On November 06, 2018 Judge Gibbons granted the motion to dismiss filed by the Respondent lawyers, concluding the lawyers were immune from suit.

A motion for reconsideration was timely filed and an Order denying Ballard’s motion was filed on December 3, 2018. This appeal followed.

¹ The trial court denied the motions to dismiss made by Defendants Diane Combis and Chris A. Combis.

STANDARD OF REVIEW

This appeal is from an order granting a motion to dismiss pursuant to Rule 12. The factual allegations of the complaint as assumed to be true for purposes of the motion. Bessinger v. Bi-Lo, Inc., 366 S.C. 426, 622 S.E.2d 564 (2005); Justice v. The Pantry, 330 S.C. 608, 493 S.E.2d 871 (Ct.App. 1999), *affirmed as modified* 335 S.C. 37, 496 S.E.2d 871 (1999). Therefore, the issues on appeal present only questions of law. The appellate court reviews questions of law *de novo*. Matter of Chapman, 419 S.C. 172, 786 S.E.2d 843 (2017).

FACTS

Appellant Desa Ballard (hereafter “the Trustee”) is the Successor Trustee of the Trust of Chris Combis, u/a/d October 15, 2013 (hereafter “the Trust”), pursuant to the agreement of parties recorded at Lancaster County Register of Deeds at Book 765, Page 326-334 on November 12, 2013 and Mecklenburg County Register of Deeds at Book 28829, Page 21-29, on November 13, 2013. (R.p.173, ¶ 1). She also serves as Personal Representative of the Estate of Chris Combis, which is pending in Lancaster County probate court. In re: Estate of Combis, Case No. 2012-ES-29-00415. The estate remains open.

Ballard, as trustee, brought an action against the decedent’s adult son, George Combis, and the son’s wife, Diane, to recover \$412,000.00, George and Diane had stolen from the trust prior to the death of George’s father. Ballard v. Diane Combis, Case No.

2013-CP-29-001458; *Ex Parte*: Ballard *In re*: Regions Bank v. George Combis *et al.*, Case No. 2013-CP-29-01008². Ballard's claims were consolidated in the circuit court by order of Judge Brian Gibbons in 2014. Diane removed the action to federal court, where it was tried non-jury by District Court Judge Joseph F. Anderson Jr. Ballard v. Combis, C/A: 14-1839-JFA.

By order dated September 1, 2016, Judge Anderson awarded the trust a judgment against George and Diane for a judgment in excess of \$800,000.00; the damages were largely based upon the money stolen from the trust. (R. p. 16). George and Diane appealed to the Fourth Circuit Court of Appeals, which reversed the judgment as to George (who was not the prior trustee) but affirmed the judgment as to Diane. The decision was not published but is included in the record here for context. Ballard v. Combis, Fourth Circuit Court of Appeals Case No. 16-2057, Judgment filed January 8, 2019 (R. p. 3).³

After going through a multitude of prior attorneys, on July 22, 2015, ultimately George and Diane hired Redding Jones, LLC, a law firm in Charlotte. (R. p. 175, ¶15). By order entered October 28, 2015, the senior partner of that law firm, David Redding, was admitted to practice in the United States District Court for the District of South Carolina. (Case No. 0:14-cv-01839, ECF 142). Despite an obvious ethical conflict,⁴ Redding and

² This was a foreclosure action that was pending when Ballard became successor trustee of the trust. The real property is a home in Lancaster County where two (2) of the three (3) trust beneficiaries were then living, in accordance with the terms of the trust. Ballard sold a separate parcel of real estate owned by the trust in order to reinstate the mortgage.

³ The Fourth Circuit reversed the dismissal of Personal Representative Ballard's claim against George's company Superior Tile relative to a \$230,000 note (plus interest) it owed the estate. There is currently pending Ballard's motion for Summary Judgment against George's company to recover those sums due. The amount now due is approximately \$450,000.

⁴ The inherent conflict associated with simultaneously representing Diane and their corporation was prominently noted by the Fourth Circuit in its decision at Footnote 3 therein.

his law firm served as lead counsel for both George and Diane Combis, their son and their interrelated companies in all pretrial proceedings and at the trial before Judge Anderson in District Court.

During the pendency of the proceedings before Judge Anderson being led by Redding, two lawyers in his firm, assisted George and Diane in transferring property out of their names at the same time Redding was defending George and Diane in the District court case which led to the judgment against them and in favor of the trust.

Respondent Kent D. Jones (hereafter “Jones”) prepared documents in September 22, 2015 to transfer unencumbered, valuable real property in North Carolina from George and Diane’s name to their adult son, Defendant Chris A. Combis. (R. p. 176, ¶ 19). This transaction was a “fraudulent conveyance for insufficient consideration made in an attempt to assist George and Diane in avoiding payment of a pending judgment in an action brought by the Trust against George and Diane, when [Jones] knew or should have known that his acts operated to assist George and Diane in evading appealing judgment against them in South Carolina and defraud the Trust.” (R. p. 175, ¶ 10).

In June 2016, shortly before the trial was commenced before Judge Anderson, Respondent O’Brien prepared a North Carolina Quit Claim deed with respect to unencumbered, valuable commercial property in downtown Charlotte which was owned jointly by George and Diane, into Diane’s name only. (R. p. 174, ¶ 9). Respondent O’Brien had “full knowledge that [his] acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the trust.” *Id.*

After obtaining the judgment in favor of the trust against George and Diane, Ballard discovered the fraudulent conveyances, which had been facilitated by Respondent lawyers

Redding and Jones, LLC, O'Brien and Jones. She brought this action for damages and other relief in November 2017. The Defendants included Diane, who received sole title to the North Carolina commercial property in downtown Charleston, and George and Diane's son, who received title residential property in Charlotte, as a result of the fraudulent transfers⁵.

Respondents moved to dismiss, asserting they were immune from liability for knowingly assisting their clients, George, Diane and Chris⁶, in defrauding the trust by assisting in hiding assets previously held in the individual names of their clients. Following a hearing, Judge Brian Gibbons dismissed the Respondent lawyers as parties to the action. (R. p. 9). This appeal followed.

⁵ The same law firm, Respondent Redding, Jones LLC, continues to represent Diane in proceedings in state court in North Carolina in which Ballard is seeking to collect the trust's judgments. Ballard v. Combis, Case No. 17CVS2179 (Mecklenburg County Superior Court). Since the judgment of the Fourth Circuit reversed the judgment against George, collection efforts will proceed against Diane, with the existing stay on collection being lifted. Since the Fourth Circuit reversed the lower court relative to a \$230,000 note owed by George's company Superior Tile, proceedings against him and it are being pursued in South Carolina. Redding's firm continues to represent George and his company(s) in that matter. George may have transferred ownership to Diane or his son Chris.

⁶ Redding Jones, LLC and its lawyers also represented Chris A. Combis in numerous matters, including a Rule to Show Cause in Lancaster County in which Ballard is seeking to recover personal property of the estate of Chris Combis (Chris A. Combis' deceased grandfather). Case No. 2014-CP-29-00306. That matter remains pending. Three (3) lawyers from Respondent Redding, Jones, LLC are defending George, Diane and Chris A. in the Rule to Show Cause. That matter is currently stayed by order of Circuit court Judge Brian Gibbons pending a criminal investigation he initiated against members of the Combis family for "criminal conspiracy" and perjury. (R. p. 213, lines 14 – 25).

ISSUE

THE TRIAL COURT ERRED IN DISMISSING THE CLAIM AGAINST RESPONDENTS BECAUSE EXISTING PRECEDENT DOES NOT ADDRESS A SITUATION IN WHICH THE LAWYERS KNOWINGLY ASSISTED THE CLIENT IN HIDING ASSETS WHILE ALSO DEFENDING THE CLIENT AGAINST THE CIVIL MATTER WHICH RESULTED IN THE JUDGMENT, THEY WERE ATTEMPTING TO INSULATE THE CLIENT AGAINST.

To the extent Ballard is asking the appellate court to argue against precedent, a motion seeking that relief will accompany the filing of the final appellant's brief. However, Ballard believes the issue presented here does not require the appellate court to reverse or modify existing precedent.

Other cogent ways to state the issue presented are:

- Is a lawyer allowed to knowingly and intentionally assist a client in divesting himself of assets during pending litigation, when the actions of the client in doing so are fraudulent and the lawyer knows it?
- Can a lawyer be held liable for assisting a client in committing a fraud by divesting of assets while expecting the entry of a judgment against the client when the lawyer knows the client's actions are unlawful and the lawyer's own actions facilitate the unlawful act?

In dismissing Ballard's claims against the Respondent lawyers, the trial judge correctly summarized the prior holdings of the appellate courts in Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). The trial judge relied on Stiles in ruling:

... [A]n 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. pp. 9-10).

Aside from the inherent conflict in representing both George and Diane and their son, as well as their companies all at the same time, the motion, as argued by counsel for Respondent lawyers, overlooked the unlawful nature of the conduct by the members of the Combis family committed with the knowledge of the lawyers that they were actively assisting their clients in unlawful activity. “[W]hat they are alleging is that the lawyers conspired with their own client to convey property out of his name. Essentially it is a fraudulent transfer claim. That’s not uncommon, we see those in bankruptcy context, we see those in contexts.” (R. p. 193, lines 20-25).

Ballard’s counsel pointed out the obvious difference in this case and prior precedent. “In essence what they’ve done is they didn’t get another law firm to handle these transfers but they’ve got this amount of money that they owed.” (R. p. 203, lines 12 – 15).

In other words, the Combis lawyers knew their clients were committing an unlawful act by completing the fraudulent conveyances, and they directly facilitated and assisted their clients in the fraud so as to avoid accountably for the monies that were clearly stolen from the trust. The statement by Ballard’s counsel referenced a typical scenario, in which an unwary lawyer is called upon to assist in a property transfer, having no knowledge that the client is divesting himself of assets while anticipating a judgment being entered against him. Here, instead of referring the matter out to a lawyer(s) without obvious conflicts who might legitimately claim ignorance of the unlawful nature of the transfers, the Respondent lawyers, knew full well that the transfers of real property were unlawful and in essence part of a scam, assisted their clients in divesting the assets.

The conduct of the clients themselves could arguably be governed by North Carolina law, but it really doesn't matter whether North Carolina or South Carolina law applies to their conduct. Under the law of both states, the transfers of real property out of [George and] Diane's name into the name of Chris A. was a fraudulent transfer, especially in context. Because Respondent lawyers were defending the civil action in which the judgment was being sought (and was obtained) and despite the inherent conflict in doing so, the Respondent lawyers knew, undoubtedly better than their own clients did, that a judgment against one or more of them was likely to occur. Nonetheless, under the veil of "immunity" Respondent lawyers seek to insulate themselves from assisting their clients in violating the law. To do so is neither just nor legal.

North Carolina law "prohibits debtors from fraudulently conveying their assets to avoid creditors." N.C.Gen.Stat. § 39-15 (1984), cited in Kirkhart v. Saieed, 107 N.C.App. 293, 419 S.E.2d 580 (1992). "If the conveyance is voluntary and made with the actual intent to defraud creditors, it is void⁷." *Id.*

South Carolina law is similar. S.C. Code Ann. § 27-23-10 *et seq.*; Coleman v. Daniel, 253 S.C. 363, 170 S.E.2d 665 (1969); *See also* Tuller v. Nantahala Park Company, 276 S.C. 667, 281 S.E.2d 474 (1981), "The Statute of Elizabeth renders void any transfer of property made with an actual intent to defraud." Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (1999).

⁷ Counsel for Respondent lawyers correctly pointed out that the South Carolina courts cannot grant part of the relief Ballard sought in her complaint, that being a restoration of the real property to the name of the debtor who divested himself of the assets to avoid creditors. However, the action against the Respondent lawyers is one for damages; not equitable relief. Ballard will have to litigate in North Carolina as part of her collection proceeding to restore the real property that was transferred out of the debtor's name fraudulently (to her son), if the debtor (Diane) does not have sufficient assets in her name to satisfy the judgment.

Prior South Carolina precedent on this issue involves cases in which the lawyer was not engaged in ethically fraught misconduct in association with the client. The seminal case on this issue is Gaar v. North Myrtle Beach, 287 S.C. 525, 339 S.E.2d 887 (1986). In determining the attorney against whom liability was asserted was immune from suit, the Supreme Court concluded that the attorney was protected from immunity because he acted “in good faith.” *Id.* 339 S.E.2d 889. The Court found that “[t]o hold that an attorney who files pleadings in support of his client’s position . . . is liable to the other party in damages “would create a conflict of interest with the attorney’s obligation to properly represent and support his client.” *Id.*

In its subsequent decision on the same point, the Supreme court noted “an attorney may be held liable where he acts in bad faith or for his own personal motivations.” Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). Specifically, the Court cited to cases in other jurisdictions which held that “an attorney may be held liable arising out a conspiracy with his client.” *Id.* at 602. Among the cases the Court examined were cases from California, Maryland, Minnesota Florida and Mississippi that held attorneys liable for “tortious acts with their clients”. *Id.*

In Stiles, the Supreme Court specifically held that “an attorney may be held liable for conspiracy 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.” The Court affirmed the trial court because “the complaint here fails to set forth sufficient facts” to establish an independent duty.

Here, the complaint does specifically state specific facts to allow the claim against the Respondent lawyers to proceed. The respondent attorneys are alleged to have known

they were assisting their clients in transferring assets for the purpose of defrauding creditors. Not only did they know, they were actively defending the proceedings that led to the judgment, all the while representing parties and taking positions filled with ethical conflicts. See by way of example Fraidin v. Weitzman, 93 Md. App. 168, 611 A.2d 1046 (1992), cited in Stiles.

Respondent lawyers were defending George while at the same time ostensibly defending Diane and others in attempting to avoid entry of the judgment in favor of the Trust. At the same time, they were seemingly throwing Diane under the litigation bus to protect George. Whether that relationship, in and of itself, rises to the level of an independent duty is moot, it certainly creates a circumstance in which a lawyer is acting with full knowledge of the wrongful nature of his client's conduct and actively assisting the client(s) in breaking the law. The Respondent lawyers participated in the wrongful activity, by facilitating the fraudulent transfers of real property. The Respondent lawyers facilitated the wrongful conduct of their clients by providing legal services which perpetrated a fraud on the trust (by divesting the pending debtors of assets from which the creditor could collect). Under these circumstances, the conduct of the Respondent lawyers may indeed be more offensive than the conduct of the debtor clients, because the Respondent lawyers knew they were providing their conflicting clients with a means to commit fraud. Arguably the clients, as laypeople, may not have known the conveyances were fraudulent or appreciated the conflicts, but their lawyers certainly did.

Moreover, under South Carolina law, a violation of the Rules of Professional Conduct "are relevant and admissible" in assessing a lawyer's duties to his clients. Smith v. Haynsworth, 322 S.C. 433, 472 S.E.2d 612, 614 (1996). Ballard would assert that the

term “relevant”, which is used in establishing a lawyer’s duties “to the legal system and a public citizen having special responsibility for the quality of justice” is the dispositive language. Rule 407, SCACR, Preamble, Section 1.

The Rules make clear that a lawyer’s obligations are not just to his clients. *Id.* There is a specific duty to opposing parties. Rule 3.4 sets forth a number of prohibitions on the conduct of lawyers as to opposing parties, which include not “willfully obstruct[ing] another party’s access to evidence or unlawfully alter[ing], destroy[ing] or conceal[ing] a document or other material having potential evidentiary value.” Rule 3.4(a).

Additionally, Rule 4.4(a) sets forth specific obligations incumbent on a lawyer as to “third parties” which would include the trust. “A lawyer should not use means that have no substantial purpose other than to . . . burden a third party. . .” By assisting their clients in divesting themselves of assets which are available for collection of a pending judgment, a lawyer intentionally burdens a third party assisting in creating difficulty in collecting a judgment.

Ballard does not suggest that the law imposes a duty upon every lawyer to insure the reasons a client is seeking to transfer assets is to avoid a pending judgment. Under normal circumstances, a conveyance is just a conveyance.

But where the lawyer is actively defending the client(s) in trying to prevent the entry of judgment against one or both of the clients, Ballard asserts that a lawyer’s knowing facilitation in assisting a client in perpetrating a fraudulent conveyance for the purpose of avoiding creditors in the event the defense is unsuccessful presents evidence of bad faith and may support a claim for conspiracy against the lawyer who assists in facilitating the fraudulent conveyance. In short, the lawyer is assisting the client in unlawful activity

because he knows why the conveyance is being made. In that circumstance, a conveyance is not just a conveyance, but an unlawful act. No one would seriously argue that a lawyer is immune for liability for knowingly assisting a client in violating the law.

Law School 101 teaches every lawyer that “it is professional misconduct to . . . engage in activity involving dishonesty, fraud, deceit or misrepresentation.” Rule 8.4(d). It is not a far stretch to impose civil liability on a lawyer for assisting a client in engaging in dishonesty, fraud, or deceit.

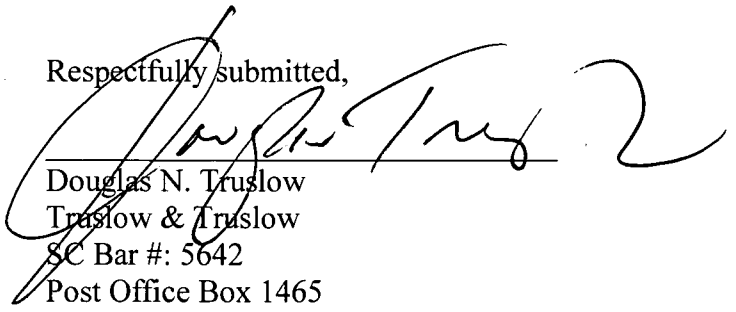
Ballard asserts that the existing precedent in South Carolina supports the assertion that, under the facts alleged here, which for purposes of the motion to dismiss are deemed to be true, existing precedent permits her claim against Respondent lawyers to continue. To the extent Ballard’s appeal seeks to argue against precedent, which she does not believe is the case, she will seek appropriate permission under the rules with her filing of her final brief.

If, however, it is determined that the issue presented here involves a novel question of law, the appellate courts clearly disfavor deciding novel questions of law on a motion to dismiss. *See Farmer v. CAGC Insurance Company, 424 S.C. 579, 819 S.E.2d 142 (2018).*

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

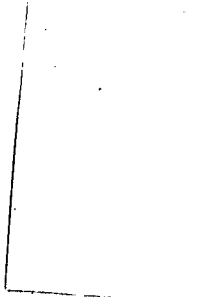
Respectfully submitted,



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June 25, 2019

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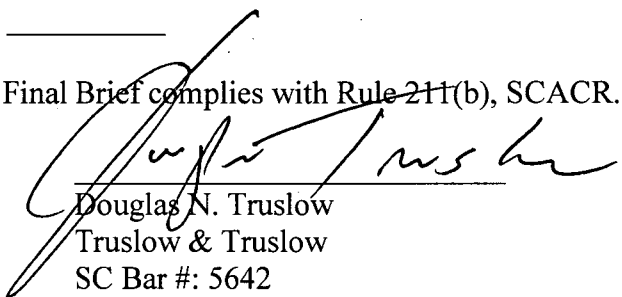
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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