

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, **RECEIVED**

JUN 27 2019

v.

SC Court of Appeals

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 REPLY BRIEF OF APPELLANT

Douglas N. Truslow
Truslow & Truslow
SC Bar #: 5642
Post Office Box 1465
Columbia, South Carolina 29202
803.256.6276
803.256.7659 Facsimile
Email: douglastruslow@truslowlaw.com

Attorney for Appellant

TABLE OF CONTENTS

| | |
|---|---|
| TABLE OF AUTHORITIES | 1 |
| REPLY TO RESPONDENT’S ISSUE II | 2 |
| REPLY TO RESPONDENT’S ISSUES III AND IV | 2 |
| Lack of Personal Jurisdiction | 2 |
| A. Redding Jones LLC | 2 |
| B. Kent D. Jones | 3 |
| C. Simon John O’Brien..... | 4 |
| RESPONSE TO ISSUES V AND VI..... | 6 |
| RESPONSE TO ISSUE VII | 6 |
| CONCLUSION | 7 |

TABLE OF AUTHORITIES

Cases

| | |
|---|---|
| <u>Baker v. Port City Steel Erectors Inc.</u> , 261 S.C. 469, 200 S.E.2d 681 (1973)..... | 4 |
| <u>Bessinger v. Bi-Lo, Inc.</u> , 366 S.C. 426, 622 S.E.2d 564 (2005)..... | 2 |
| <u>Cribb v. Spatholt</u> , 382 S.C. 490, 676 S.E.2d 714 (Ct.App. 2009)..... | 5 |
| <u>International Shoe Co. v. Washington</u> , 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed2d 95 (1945) ... | 5 |
| <u>Justice v. The Pantry</u> , 330 S.C. 608, 493 S.E.2d 871 (Ct.App. 1999), <i>affirmed as modified</i> 335 S.C. 37, 496 S.E.2d 871 (1999) | 2 |
| <u>Power Prods. & Services Co., v. Kozma</u> , 379 S.C. 423, 341, 665 S.E.2d 660, 664 (Ct.App. 2008) | 5 |

REPLY TO RESPONDENT'S ISSUE II

No reply necessary. As set forth in the Initial Brief of Appellants, the allegations of the complaint are deemed true for purposes of this proceeding. 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).

REPLY TO RESPONDENT'S ISSUES III AND IV (Purported Additional Sustaining Grounds)

Respondents argue that the Court should affirm the judgment of the trial court based on other grounds, even if the Court agrees that the trial court's ruling on the substantive issue was error.

Lack of Personal Jurisdiction

In her Memorandum in Opposition to Motion to Dismiss, Ballard set forth in detail the minimum contacts of each of the Respondents, including answers to discovery which verified regular and systematic contacts with the State of Carolina. (R. p. 79).

A. Redding Jones LLC

As to defendant Redding Jones, LLC, the records reflect that Redding, Jones LLC was admitted *pro hac vice* to represent the relevant clients, George and Diane Combis, in the United States District Court for the District of South Carolina, and actively continued that representation throughout the five-day trial before District Judge Anderson and on appeal¹ (R. p. 92). Also involved in the appeal was a member of Redding, Jones who is a

¹ At the time, the Memorandum in Opposition to Motion to Dismiss was prepared, the Fourth Circuit Court of Appeals had not yet affirmed the judgment which was on appeal. The judgment was affirmed in part and reversed in part by order of the Fourth Circuit dated January 8, 2019 (ECF 62-1).

member of the South Carolina Bar (Joseph Pellington), who has been a member of the South Carolina Bar since 2012. (R. p. 100).²

Additionally, Pellington and another Redding Jones LLC lawyer who is a member of the South Carolina Bar, Ty McTier, continued to represent George and Diane Combis (as well as their son Chris), in connection with proceedings in the Estate of Chris Combis, which is a Lancaster County estate opened in 2012. Case No. 2012-ES-29-00415. The matter was removed to circuit court and assigned Case No. 2014-CP-29-000306.

Even while claiming Redding Jones lacks sufficient contacts for South Carolina to exercise personal jurisdiction over it, Redding Jones lawyers continue to appear in South Carolina Courts in this case and others. Notably, Pellington and McTier defended a Rule to Show Cause proceeding involving the Combises, which was initiated in circuit court on September 5, 2017 relative to items of personal property that belong to the Estate, which have not been released to the personal representative. The hearing on that Rule to Show Cause adjourned abruptly on November 17, 2017, when Circuit Court Judge Brian Gibbons stayed the proceedings while a report to law enforcement was requested relative to items held in both North and South Carolina. (R. p. 213, lines 9-25). The stay has been lifted, over the objection of Redding Jones attorneys Pellington (R. p. 220).

Lastly, as was demonstrated to the Circuit Court, Redding Jones markets itself as providing legal services in both North Carolina and South Carolina. (R. p. 122).

B. Kent D. Jones

Kent Jones is the Redding Jones lawyer who assisted in the first fraudulent transfer of real estate (September 2, 2015) in avoidance of the pending judgment. (R. pp. 176-177,

² The representation continued despite the obvious conflict. See footnote 3 to the Fourth Circuit Court of Appeals' Decision dated January 8, 2019.

¶¶ 20-25). As set forth in the discovery responses submitted to the trial Court, Jones vacations in South Carolina at least twice per year. (R. p. 155; R. p. 64). He actively represents at least one South Carolina resident. *Id.* As noted in his discovery responses, Jones refuses to disclose any purchases of goods from any vendor in South Carolina, much less whether he has conducted any business in South Carolina during the five years prior to the filing of this action, and he refuses to disclose whether he has relatives in South Carolina. (R. p. 155). As previously noted, this refusal to disclose information provides an inference that his responses, if provided, would not support his position. Baker v. Port City Steel Erectors Inc. 261 S.C. 469, 200 S.E.2d 681 (1973).

C. Simon John O'Brien

Mr. O'Brien is the Redding Jones lawyer who facilitated the second fraudulent transfer of real estate, on May 16, 2016, of two parcels of commercial real estate in downtown Charlotte. (R. p. 177-179, ¶¶ 26 – 36). As with Mr. Jones, Mr. O'Brien vacations in South Carolina annually. (R. p. 155). He previously practiced with Redding Jones, which practices in both North and South Carolina. (R. p. 121). At the time his motion was heard, O'Brien worked for two (2) licensed South Carolina lawyers, Charles Bridgmon and Jeff Long (who are, coincidentally, prior counsel for George, Diane and Chris Combis). (R. pp. 163-164, ¶¶ 16 and 20) and assisted in the representation of a corporate client based in Lexington, South Carolina.

Like his co-respondent, O'Brien refuses to reveal whether he has done business with any South Carolina entity during the past five years, although presumably he does not vacation annually in Charleston for free. (R. p. 162).

“A court may assert general jurisdiction if the defendant has an ‘enduring relationship’ with the forum state. [citations omitted]. If an individual has an ‘enduring relationship’ with the state, he may be sued here even if the cause of action did not arise in South Carolina. (General jurisdiction attaches even when the nonresident defendant’s contacts with the forum state are not directly related to the cause of action. . . “). To satisfy the ‘enduring relationship’ requirement of general jurisdiction, the defendant’s contacts must be ‘continuous and systematic’ as well as ‘so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities”, Cribb v. Spatholt, 382 S.C. 490, 676 S.E.2d 714 (Ct.App. 2009), citing International Shoe Co. v. Washington, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.E.2d 95 (1945) (emphasis added).

“Due process requires that a defendant possess minimum contacts with the forum state such that the maintenance of suit does not offend traditional notations of fair play and substantial justice.” Cribb v. Spatholt, supra. “Further the due process requirement mandates the defendant possess sufficient minimum contacts with the forum state that he could reasonably anticipate being hauled into court there.”, *Id.*, citing Power Prods. & Services Co., v. Kozma, 379 S.C. 423, 341, 665 S.E.2d 660, 664 (Ct.App. 2008).

None of the Respondents disputed the minimum contacts with South Carolina that were demonstrated in filings before Judge Gibbons. Ballard’s proof of minimum contacts, therefore, is unchallenged.

Respondent’s Additional Sustaining Ground on personal jurisdiction fails.

RESPONSE TO ISSUES V AND VI

Respondents are correct that Ballard cannot seek to obtain equitable relief as to transfer of title of property located in North Carolina. That is the effect of S.C. Code Section 15-7-10. Ballard abandoned that request for relief in this proceeding. However, she wishes to proceed on the action for damages for the other causes of action set forth in her pleading. Section 15-7-10 does not require dismissal of the entire action as to these defendants; it merely removes from the trial court the subject matter jurisdiction to order a reconveyance of the property that was fraudulently conveyed. The damages action survives Respondent's argument under Section 15-7-10.

Issues V and VI do not provide an additional sustaining ground to affirm the decision of the trial court.

RESPONSE TO ISSUE VII

Respondents assert that, because the Fourth Circuit Court of Appeals vacated the joint and several judgment as to George Combis, Ballard is in a better position than she would have been had they not assisted in the fraudulent conveyance of the downtown Charlotte property solely to Diane. While Ballard is, indeed, attempting to collect her judgment against Diane in North Carolina³, the Fourth Circuit's ruling does nothing to address the fraudulent conveyance of the Carmel Park property, which was fraudulently conveyed out of both George and Diane's name to the name of their son Chris while the judgment was pending.⁴

³ The Mecklenburg County Superior Court lifted the stay of proceedings to collect the judgment by order filed April 9, 2019. (R. p. 1).

⁴ Chris is also subject to the contempt matter relative to withholding personal property from the estate.

While the Fourth Circuit relieved George of the joint and several judgment with Diane, it left in place additional judgments which are against George. *See* footnote 5.

Moreover, after the judgment of the Fourth Circuit Court of Appeals reversed the joint and several nature as to George of the verdict for breach of fiduciary duty, leaving Diane as the only judgment debtor on that cause of action⁵, Diane again fraudulently conveyed the same property back into the name of herself and George. (R. p. 224⁶). This time she used a separate and presumably uninformed lawyer to do so, rather than her cooperating Redding Jones lawyers who fraudulently assisted her before. So even if the Fourth Circuit's opinion did, in some respects, make it easier to collect the largest of the judgments against Diane, the Trust will continue to sustain damages as Ballard continues to chase the assets that George and Diane continue to attempt to conceal⁷.

CONCLUSION

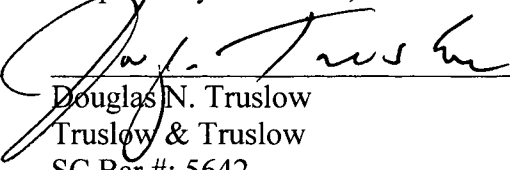
For the reasons stated in the Initial Brief of Appellants, and as further discussed herein, this Court should reverse the judgment of the circuit court and allow the claim for damages against Respondents Redding Jones, LLC, Jones and O'Brien proceed to trial.

⁵ There are other judgments against George that were not affected by the appeal. (R. p. 48, ¶¶ 5(a), (b) and (c)).

⁶ This conveyance by Diane violated the August 25, 2017 order from the Mecklenburg County Superior Court which gave full faith and credit to the South Carolina judgment, but stayed collections during pendency of the appeal to the Fourth Circuit. One of the conditions of the stay was that "neither defendant herein transfer, convey, or otherwise encumber any real property, owned jointly, or individually by either of them, to any other party". (R. p. 14, ¶ 2(a)).

⁷ The March 27, 2019 conveyance by Diane was not only a fraudulent conveyance under applicable law, it was also in direct violation of a stay that was issued by the Superior Court in Mecklenburg County which prohibited her and George from conveying assets away while the stay was in effect. The stay was not lifted until April 10, 2019, so Diane's conveyance of the downtown Charlotte commercial property from herself solely, to herself and George, was not only another fraudulent conveyance, it was in direct violation of the Stay put in place by the North Carolina Court.

Respectfully submitted,



Douglas N. Truslow

Truslow & Truslow

SC Bar #: 5642

Post Office Box 1465

Columbia, South Carolina 29202

803.256.6276

803.256.7659 Facsimile

Email: douglastruslow@truslowlaw.com

June 25, 2019

ATTORNEY FOR APPELLANT

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

JUN 27 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,

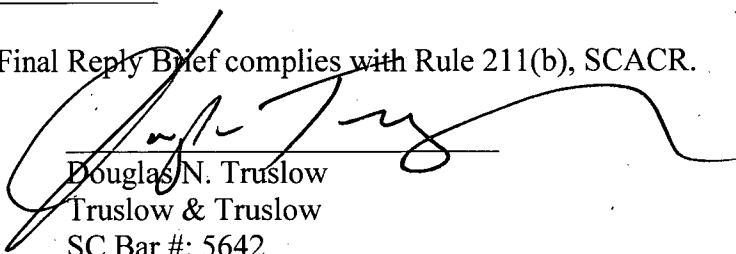
Defendants,

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

Respondents.

CERTIFICATE OF COUNSEL

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



Douglas N. Truslow
Truslow & Truslow
SC Bar #: 5642
Post Office Box 1465
Columbia, South Carolina 29202
803.256.6276
803.256.7659 Facsimile
Email: douglastruslow@truslowlaw.com

June 25, 2019

Attorney for Appellant