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**Jul 12 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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Case No. 2014-CP-04-2419  
Appellate Tracking No. 2018-00875

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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 Petitioner,

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PETITIONER MARY THOMAS' PETITION  
FOR WRIT OF CERTIORARI

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## CERTIFICATION OF COUNSEL

The undersigned counsel for Petitioner Mary Thomas certifies that a Petition for Rehearing was made and finally ruled upon by the Court of Appeals on June 11, 2021.

## QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Court of Appeals decision conflicts with the controlling law of South Carolina and constituted error in finding the transfer of real estate by a non-judgment debtor limited liability company is a fraudulent transfer under 27-23-10(A) of the South Carolina Code (2007).
- II. Whether the Court of Appeals decision conflicts with the controlling law of South Carolina and constituted error in finding the grantee is unjustly enriched by the transfer of property from a non-judgment debtor limited liability company.

## STATEMENT OF THE CASE

This case is about whether a limited liability company is a separate legal entity from its owners.

Prodigal Enterprises, LLC (“Prodigal”) was formed on September 9, 1997 for the purpose of owning the Hwy. 81 property and leasing it to Brushy Creek BarBQ to operate a restaurant (R.,p 110). There were seven original owners of Prodigal including appellant and Thomas (R., pp. 110-111). Petitioner and Thomas (who are wife and husband) eventually bought out all of the other owners and became the only owners of Prodigal and Brushy Creek BarBQ by 2005 (R., p.84).

The following sequence of events occurred:

- On April 5, 2007, petitioner was issued a runner's license to work for Action Out Bail Bonding (R., p.100).
- On October 30, 2008, the respondent loaned \$125,000.00 to Thomas (R., p. 133).
  - On December 3, 2009 petitioner passed the professional bondsman exam (R., p. 101).
- Thomas signed a promissory note at respondent's request on March 2, 2010 that acknowledged the 2008 loan, stated that the amount then due on the loan was \$181,250.00 and required monthly payments in the amount of \$34,294.71 beginning April 1, 2010 (R., p. 63; pp. 134-135).

Bail Pros Bail Bonding, LLC was formed on December 2, 2010 with petitioner as the sole member (R., p.100). Needing collateral to operate her new business, the petitioner and Thomas decided to pledge the Hwy. 81 property held by Prodigal to the Anderson County Clerk of Court. They met with attorney Bill Hood September 2009 to draft the necessary documents to pledge the Hwy. 81 property (R., pp. 114-115). After the title search revealed that Prodigal owned the real estate, Mr. Hood informed them that petitioner, as the professional bondsman, would have to own the Hwy. 81 property in order to pledge it as collateral for her bail bondsman business (R., p. 117). Up until that point, the petitioner and Thomas believed the property could be pledged by Prodigal (R., p. 86). The title exam also revealed several open mortgages on the Hwy 81 property. Mr. Hood drafted the mortgage satisfactions and the petitioner and Thomas began tracking down the mortgage holders to execute the satisfactions (R., pp. 115-116) . This process took several months to complete (R., p. 96). Once all the mortgages were satisfied, Prodigal conveyed the Hwy. 81 property to petitioner for nominal consideration on July 7, 2010

(R., pp 172-175). On July 12, 2010, petitioner pledged the Hwy. 81 property to Anderson County (R., pp. 176-180). Prodigal was subsequently dissolved.

No payment was ever made on the note and the respondent filed suit against Thomas. A judgment was entered against Thomas in favor of respondent on March 6, 2013 in the amount of \$378,108.08 (R., pp. 184-187). When respondent discovered the above transfer of the Hwy. 81 property, he brought the underlying action against petitioner, Thomas and other defendants.

The action was heard without a jury. In its order, the trial court found that the purpose of the conveyance by Prodigal to petitioner was to defraud the respondent (R., p. 9). Finding it impossible to re-title the Hwy. 81 property to a dissolved corporation, the trial court found that the “most appropriate relief” (R., p. 11) was to award a monetary judgment against petitioner in the amount of \$125,000.00. The amount of the judgment was based upon what the court found to be the value and benefit petitioner received from the transfer of the Hwy. 81 property to her

Dr. Marvin Anderson (respondent) obtained a judgement against Forest Thomas (Thomas) for \$378,108.08 on March 6, 2013. Respondent filed an action against the petitioner, Thomas and remaining defendants alleging (1) violation of S.C. Code Ann. § 27-23-10 and (2) unjust enrichment arising from a conveyance of real estate (“Hwy. 81 property”) to petitioner by the defendant Prodigal Sons LLC (“Prodigal”).

The action was tried non-jury on February 21, 2017 before Circuit Court Judge J. Cordell Maddox, Jr. On May 19, 2017, Judge Maddox issued an Order finding that the respondent was entitled to a judgment against petitioner in the amount of \$125,000.00 under either the unjust enrichment or fraudulent conveyance cause of action ( R., p. 11).

Petitioner filed a motion to reconsider on May 26, 2017 ( R., pp.15-17). Following a hearing on the motion to reconsider, Judge Maddox issued an Order denying the motion and

petitioner filed a Notice of Intent to Appeal (R., pp. 12-13). The Court of Appeals issued its opinion, without oral argument, affirming the decision of the Circuit Court. Petitioner timely filed a Petition for Rehearing arguing: (1) the Court of Appeals erred in ruling that the transfer of the Highway 81 property by a non-judgment debtor limited liability company was a fraudulent transfer, and (2) the resulting transfer unjustly enriched the petitioner. The Court of Appeals denied the Petition for Rehearing on June 11, 2021.

### ARGUMENTS

Mary Thomas petitions for review of the decision by the Court of Appeals that found a transfer made by a non-judgment debtor limited liability company to her was fraudulent and unjustly enriched her.

I. THE CONVEYANCE OF REAL ESTATE BY A NON-JUDGMENT DEBTOR LIMITED LIABILITY COMPANY WAS NOT A FRAUDULENT CONVEYANCE UNDER S.C. CODE 27-23-10.

Respondent is a judgment creditor of Thomas. Respondent brought this action under S.C. Code §27-23-10 claiming, *inter alia*, that he was a judgment creditor of the grantor which conveyed the Hwy. 81 property to the appellant. However, the grantor in that transaction was Prodigal, a limited liability company. Prior to the current action, respondent had never sued Prodigal and admitted he held no judgment against Prodigal (R., p.72).

Generally, “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.”)

South Carolina's fraudulent conveyance statute is codified under S.C. Code Ann. §27-23-

10(A):

Every gift, grant, alienation, bargain, transfer and conveyance of lands...and every bond, suit, judgment and execution which may be had or made to or for any intent or purpose to delay, hinder or defraud creditors...must be deemed and taken...to be clearly and utterly void...

The order cites the two conditions under which conveyances will be set aside as a fraudulent conveyance:

When a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt.

*Albertson v. Robinson*, 371 S.C. 311, 317 (Ct. App. 2006), quoting *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct. App. 1995).

Additionally,

Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.

*Windsor Properties v. Dolphin Head Const.*, 331 S.C. 466, 498 S.E.2d 858 (S.C., 1997), citing *Gardner v. Kirven*, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937). In *Windsor*, the property was transferred from the corporation, wholly-owned by husband, to the wife. Finding that the transfer was in reality an intra-family transfer, the court imposed the burden on the wife to

establish by clear and convincing evidence that there was consideration and that the transaction was bona fide.

However, *Windsor* is distinguishable from the present case in an important way. In *Windsor*, the corporation that conveyed the property was the judgment debtor. Therefore, S.C. Code Ann. §27-23-10 and the case law that has developed from it could be readily applied. In the present case however, the grantor in this case - the limited liability company - is not a judgment debtor. It is a separate legal entity, separate and distinct from both Thomas and the petitioner. Therefore, the Respondent failed to prove that he was a creditor of the grantor. The Court of Appeals erred in affirming the decision of the Circuit Court for this reason.

## II. THE TRANSFER OF THE REAL ESTATE DID NOT UNJUSTLY ENRICH PETITIONER.

Respondent's unjust enrichment action rests upon proof that petitioner received a non-gratuitous gift *from the respondent* by virtue of the conveyance of the Hwy. 81 property from the limited liability company. Admittedly, the conveyance was made without valuable consideration. However, the conveyance was made by Prodigal, not the respondent and not Thomas, individually. The Court of Appeals failed to apply the law regarding unjust enrichment to the evidence in the case. "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).

There is no evidence to support respondent’s cause of action for unjust enrichment. There was no allegation of an express contract between the respondent and petitioner, therefore, any recovery for unjust enrichment would fall under quasi-contract. However, the evidence fails to support a quasi-contract. The allegation in respondent’s complaint is that the transfer of the Hwy 81 property to petitioner constituted unjust enrichment. However, that transfer was not made by the respondent and respondent conferred nothing on petitioner by virtue of that transfer. The conveyance was made by a limited liability company that was a legally distinct entity from both the petitioner and Thomas. There was no judgment against the limited liability company and no action pending against the limited liability company. If the respondent believed the loan he made to Thomas unjustly enriched petitioner, that is a cause of action that was not pled in this action and would have been barred by the statute of limitations had it been.

For a plaintiff to show that a non-gratuitous gift was bestowed upon a defendant, the plaintiff must show either of the two following situations:

1. That the benefit was conferred upon the defendant at the defendant’s request; or,
2. That circumstances exist where the plaintiff may reasonably rely upon the defendant for payment and the defendant knows or has reason to know that the plaintiff is relying upon the defendant for payment; and

3. The defendant's conduct induced the plaintiff to confer the benefit on the defendant.

*Niggel Assoc., Inc. V. Polo's of North Myrtle Beach, Inc.*, 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988).

It was error to apply unjust enrichment to this case because the respondent (who is the plaintiff) never (1) conferred a benefit upon petitioner; nor are there (2) any circumstances where the respondent could reasonably rely upon petitioner for payment of the debt owed respondent by Thomas, nor is there any evidence that respondent was relying upon petitioner for payment; and, (3) there is no evidence that petitioner's conduct induced the respondent to confer a benefit on petitioner or that any benefit was so conferred.

### CONCLUSION

For the reason stated, Mary Thomas respectfully requests that her Petition for a Writ of Certiorari be granted, that the matter be reviewed by this Court, and that the Court reverse The Court of Appeals decision affirming the Circuit Court.

Respectfully submitted,

/s/ W. Patrick Yon  
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**Jul 12 2021**

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Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Petitioner,

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PROOF OF SERVICE

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I certify that I have served the Petition for Writ of Certiorari and the Appendix on Respondent, Dr. Marvin Anderson by email and depositing a copy of the same in the United States Mail, postage prepaid, on July 10, 2021 addressed to his attorney of record, Rodney F. Pillsbury, Esq, 301 Rutherford St., Greenville, SC 29609.

I further certify that I have filed a copy of the Writ of Certiorari with the South Carolina Court of Appeals by emailing the same to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org) on July 10, 2021.

July 10, 2021

/s/ W. Patrick Yon  
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**RECEIVED**

Via email (supctfilings@sccourts.org)

July 10, 2021

**Jul 12 2021**

**SC Court of Appeals**

The Hon. Daniel E. Shearhouse  
Clerk, Supreme Court of South Carolina  
Supreme Court Bldg.  
1213 Gervais Street  
Columbia, SC 29201

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

Dear Mr. Shearhouse:

In connection with the above and pursuant to the Amended Order of the S.C. Supreme Court dated May 29, 2020, attached please find Mary Thomas's Petition for Writ of Certiorari and the Appendix. Also enclosed please find a Proof of Service upon the attorney for Respondent and of the filing of a copy of the Writ with the Clerk of the Appellate Court. The \$250.00 filing fee has been mailed under a separate letter.

With regards, I am

Sincerely yours,



W. Patrick Yon

attachments

cc: The Hon. Jenny Abbot Kitchings (via email ctappfilings@sccourts.org)  
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