THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Bentley D. Price, Circuit Court Judge
Case No. 2017-CP-10-05426

Appellate Case No. 2020-001132

Family Services, Inc., as Conservator for Muriel W. Clarkin,.....Appellant,

v.

Bridget D. Inman, Muriel C. Kennedy, and Patricia Clarkin Smith, ...Respondents

and Bruce A. Berlinksy,
Intervenor.

FINAL BRIEF OF RESPONDENT MURIEL C. KENNEDY

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STATEMENT OF THE CASE

The following is the statement of the case as it applies to Appellant's appeal of the trial court's order of July 9, 2020, granting Respondent Kennedy's Motion to Dismiss and the trial court's order of July 30, 2020, denying Appellant's Motion to Reconsider. The statement of the case as to this appeal should be confined only to matters filed in the lower court directly relating to the order granting Respondent Kennedy's Motion to Dismiss.

Appellant filed an Amended Summons & Complaint on December 13, 2019 (Amended Summons & Complaint, R. pp. 263-280), adding Respondent Muriel C. Kennedy as an additional defendant and asserting five (5) causes of action against her; Equitable Lien, Fraudulent Conveyance, Civil Conspiracy, Constructive Trust, and Unjust Enrichment (Amended Complaint, R. pp. 270-280).

On February 25, 2020, Respondent Kennedy filed a Motion to Dismiss under Rule 12(b)(6) S.C.R.C.P. (Motion to Dismiss, R. pp. 194-196), Respondent also filed a Supplemental Memorandum in Support of the Motion to Dismiss dated June 19, 2020 (Supplemental Memorandum in Support of Motion to Dismiss, R. pp. 500-503). Appellant filed a Memorandum in Opposition to Respondent Kennedy's Motion to Dismiss on June 22, 2020 (Memorandum in Opposition to Motion to Dismiss, R. pp. 504-519).

A hearing before the Honorable Bentley Price, Circuit Court Judge, was held concerning Respondent Kennedy's Motion to Dismiss and other motions on June 24, 2020 and resumed on June 30, 2020. Judge Price granted Respondent Kennedy's Motion to Dismiss by Order dated July 9, 2020 (Order of July 9, 2020, R. pp. 19-21). On July 30, 2020, Judge Price denied Appellant's Motion to Reconsider and this appeal followed (Order of July 30, 2020, R. pp. 22-24).

STANDARD OF REVIEW

The Appellate Court applies the same standard of review as a trial court in reviewing the dismissal of action pursuant to Rule 12(b)(6) S.C.R.C.P.:

> "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the Complaint. Id. A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case. Id. 'The question is whether, in the light most favorable to the Plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claims for relief.' Id. The court should not dismiss a complaint merely because the court doubts the Plaintiff will prevail in the action." Id. *Cole Vision Corporation v. Hobbs*, 384 S.C. 283, 287, 680 S.E. 2nd 923, 925-926 (Ct. App. 2009).

Conversely, the motion should be granted if it is apparent from the pleadings that the Plaintiff cannot possibly recover under any theory alleged in the complaint.

In considering a motion to dismiss, both the trial court and the court on appeal must presume all well-pled facts to be true. *Hhhunt Corporation v. Town of Lexington*, 389 S.C. 623, 633, 699 S.E. 2nd 699, 703 (Ct. App. 2010).

FACTS
(AS RELATE TO RESPONDENT KENNEDY)

Appellant, Family Services, Inc. is the conservator for Muriel W. Clarkin. Respondent Muriel C. Kennedy is Clarkin's daughter. Respondent Bridget D. Inman is Clarkin's granddaughter.

On December 3, 2019, Appellant filed an Amended Complaint in the lower court adding Respondent Kennedy as a defendant (Amended Complaint, R. pp. 263-280).

This appeal is from an Order of Judge Price dismissing the Amended Complaint against Kennedy (Order of July 9, 2020, R. pp. 19-21).

The pertinent allegations of the Amended Complaint as they relate to Respondent Kennedy's motion to dismiss are as follows:

Prior to the existence of the conservatorship, Clarkin and Inman allegedly entered into an agreement that Clarkin would lend Inman money for Inman to purchase a house (Amended Complaint, paragraph 5, R. p. 264). Inman disputes that the money advanced by Clarkin was a loan, but rather a gift from her grandmother.

No loan documents between Inman and Clarkin are alleged to exist by the Amended Complaint.

Clarkin agreed to borrow from a home equity line of credit on property generally known as 602 Atlantic Street, Mt. Pleasant, South Carolina (the HELOC property), in an amount, after modification, of $150,000.00 (Amended Complaint, paragraphs 6-9, R. p. 264).

The HELOC was allegedly used to advance Inman $137,000.00 for the purchase of a house located in Berkeley County, and generally known as 316 Elrod Drive, Goose Creek, South Carolina and referred to in the Amended Complaint as the "Subject Property" (Amended Complaint, paragraphs 11-12, R. p. 264).

Inman made monthly payments on the HELOC for a period of years (Amended Complaint, paragraph 15, R. p. 265).

It is undisputed that Mrs. Clarkin has not owned any interest in the HELOC property since 2014. (Plaintiff's Memorandum in Opposition to the Motion to Dismiss, footnote 1, R. p. 505). Nowhere in the Amended Complaint is it alleged that the Clarkin conservatorship is paying the HELOC loan, nor that it intends to pay any recovery obtained for Respondents toward the HELOC.

Inman sold the Subject Property on February 6, 2017 for $100,000.00 (Amended Complaint, paragraph 25, R. p. 266).

Inman allegedly gave $85,000.00 of the sale proceeds of the Elrod Drive property to Kennedy to invest and hold on behalf of Inman (Amended Complaint, paragraph 71, R. p. 271).

Appellant alleges that Kennedy took a majority of the $85,000.00 and purchased Apple stock for $67,000.91 (Amended Complaint, paragraph 74, R. p. 271) and paid attorney fees for Inman's former attorney, Bruce Berlinsky from the remainder (Amended Complaint, paragraph 76, R. p. 272).

In paragraph 87 of its Amended Complaint, Appellant alleges that Inman offered to deed the Elrod Drive property to Plaintiff. Appellant does not plead any qualification or conditions upon the offer to deed the property (Amended Complaint, paragraph 87, R. p. 273).

In paragraph 89, Appellant alleges "Thereafter Defendant sold the subject property....". Appellant acknowledged in its brief that it had declined the offered deed (Appellant's Brief, page 25).

In paragraph 88 of its Amended Complaint, Appellant alleges testimony from Inman's deposition stating that she offered to deed the property for the purpose of "trying to help my grandmother" and further testified "...so I offered the home. I didn't want it to be rental, but I thought it would be best if Family Services could deed it back – I deed it back to them. They could then have it as a rental property. Not they manage it, but have a rental property management, have it as a rental property for my grandmother, as an asset to her, and use it as income for my grandmother." (Deposition citations omitted) (R. p. 273).

In paragraphs 90 & 91 of the Amended Complaint, Appellant alleges that Defendant offered to provide the Plaintiff the proceeds of sale, but did not do so (Amended Complaint, paragraph 90, R. p. 274) and that Inman further testified that she offered the Appellant the entire

proceeds of sale stating "I did make attempts to give that lump sum to them to show my appreciation for the gift." (Amended Complaint, paragraph 91, R. p. 274).

ARGUMENT

I. APPELLANT'S ALLEGATIONS CONTAINED WITHIN THE FOUR CORNERS OF THE AMENDED COMPLAINT NEGATE AT LEAST ONE NECESSARY ELEMENT OF PROOF OF EACH OF THE CAUSES OF ACTION ALLEGED AGAINST RESPONDENT KENNEDY AND THE TRIAL JUDGE WAS THEREFORE CORRECT IN DISMISSING THE AMENDED COMPLAINT AGAINST HER.

The Amended Complaint consists of 132 paragraphs including unusually detailed evidentiary allegations. Allegations contained within the four corners of the Amended Complaint negate at least one necessary element of proof of each cause of action alleged against Respondent Kennedy.

In paragraph 87 of the Amended Complaint, Appellant alleges, without any qualifying or limiting language "**Defendant [Respondent Inman] offered to deed the Subject Property to Plaintiff.**" Only then did Inman sell the property and receive $99,317.71 in proceeds, as alleged in paragraph 89 of the Amended Complaint (Amended Complaint, paragraphs 87 & 89, R. pp. 273-274).

In evaluating a 12(b)(6) motion, the trial court and this court "must presume all well pled facts to be true." *Hhhunt Corporation v. Town of Lexington*, 389 S.C. 623, 633, 689 S.E. 2nd 699 (Ct. App 2010).

Appellant is bound by the admissions in its pleadings. See *Postal v. Mann*, 308 S.C. 385, 418 S.E. 2nd 322 (Ct. App. 1992). Wherein, the Court stated:

> "It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in the pleading are *conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with its*

> *pleadings...*" and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action." (Citation omitted) Id. at 308 S.C. 387, 418 S.E. 2nd 323.

Since the Amended Complaint does not allege that Respondent Kennedy had an interest in the Elrod Drive property, it cannot be inferred that she took direct action to convey the property. Respondent Kennedy's liability, if there be any, could only be derivative from the actions of Respondent Inman.

All the causes of action asserted against Respondent Kennedy involve some sort of alleged fraud worked by Respondent Inman against her grandmother and allegedly either perpetuated by, or done in concert with Respondent Kennedy.

If the allegations contained within the four (4) corners of the Amended Complaint demonstrate that Respondent Inman did not act with fraudulent intent, or intent to harm her grandmother in the sale of the Elrod Drive property, then there is no viable claim against Respondent Kennedy for retention of any of the sale proceeds for the benefit of Respondent Inman. Judge Price properly dismissed the Amended Complaint against Respondent Kennedy.

Respondent Kennedy will address each of the causes of action alleged against her in the order they appear in the Amended Complaint.

EQUITABLE LIEN

A discussion of the law of equitable liens in found in this court's opinion in *Regions Bank v. Wingard Properties, Inc.,* 394 S.C. 241, 715 S.E. 2nd 348 (Ct. App. 2011) wherein it was stated:

> "For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security or payment of the debt." *First Fed. Sav. & Loan Ass'n of S.C. v. Finn,* 300 S.C. 228, 231, 387 S.E. 2nd 253, 254 (1989). "An equitable lien is a 'mere floating equity until a judgment or decree subjecting the property to the payment of the debt or

> claim is rendered." *Horry Cnty. v. Ray*, 382 S.C. 76, 83-84, 674 S.E. 2nd 519, 524 (Ct. App. 2009) (Internal citation and quotation marks omitted). Even though an equitable lien is not judicially recognized until a judgment is entered declaring its existence, the lien relates back to the time it was created by the conduct of the parties." Id. at 84, 674 S.E. 2nd at 524. "Whether an equitable lien exists that would take priority over a mortgage must be considered in conjunction with other well recognized equitable principals. Equitable liens must rest on an expressed or implied contract; moral obligations do not sustain equitable liens." *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 145, 337 S.E. 2nd 244, 247 (Ct. App. 1985). Id. at 394 S.C. 250, 715 S.E 2nd 353.

Assuming for the purposes of this appeal, that the money given to Inman from the HELOC loan was a debt rather than a gift, Appellant cannot possibly identify "specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for payment of the debt." Id. Once the Subject Property was sold the proceeds become legally indistinguishable from the property itself. Upon declining the offer of the deed to the property prior to the sale, the Appellant extinguished any claim it may have had that the supposed debt attached to the property or the subsequent sale proceeds.

There could be no expressed or implied intent that the sale proceeds serve as security for payment of the debt (again assuming it a debt rather than a gift), since the refusal of the deed disproves any contention that the property was intended to secure a debt. The Appellant, having refused title to the property, cannot later hold Respondent Kennedy liable for any supposed lien against the proceeds.

Appellant, being unable to prove all elements of the doctrine of equitable lien, is now attempting to enforce no more than what it seems to believe is a moral obligation which does "... not sustain equitable liens." Id.

Had there ever been a valid claim to an equitable lien, it has been waived by Appellant's refusal to accept the deed.

Appellant's argument that it declined the deed "...saying that it would be a burden and not a benefit to Clarkin..." (Appellant's Brief, page 25) indicates Appellant's conscious and reasoned abandonment of any equitable right in the property or the proceeds. See *Strickland v. Strickland*, 375 S.C. 76, 650 S.E. 2nd 465, 471 (2007).

Appellant cannot possibly prove the elements of an equitable lien, according to its own pleadings.

FRAUDULENT CONVEYANCE

The Amended Complaint alleges that Respondent Inman, after Appellant's refusal to accept the deed to the subject property, sold the property, and transferred the majority of proceeds to Respondent Kennedy who then invested $67,000.00 in Apple, Inc. stock. Appellant alleges that the transfer of proceeds was made to delay, hinder or defraud Plaintiff in its attempt to collect its claims. Appellant has no claim over the proceeds having waived any equitable lien by refusing the offer of the deed, so Respondent Inman was free to do what she wished with the sale proceeds.

It should also be noted that Appellant's claims against Respondent Inman are yet unproven and disputed.

Although Appellant attempts to cast the transfer of proceeds as without valuable consideration (Amended Complaint paragraph 115, R. p. 276), that allegations is refuted by the allegations in paragraph 109 (Amended Complaint, paragraph 109, R. p. 276) that Respondent Kennedy paid "...all of Defendant's legal expense and costs regarding this matter."

While well-pled allegations in the pleadings are taken as true for purpose of a motion to dismiss, the allegation of lack of consideration in paragraph 115 (Amended Complaint, paragraph

115, R. p. 276) is clearly inconsistent with paragraph 109 and therefore cannot be considered "well-pled" so as to be entitled to the presumption of veracity.

Since, as pled in paragraph 109, there was consideration exchanged between Respondents Inman and Kennedy (Kennedy's payment of legal fees and costs), actual intent to defraud must be pled and proven by clear and convincing evidence. *Oskin v. Johnson*, 400 S.C. 390, 396-397, 735 S.E. 2nd 459 (2012).

> "The Statute of Elizabeth is concerned with the intent of the grantor, who conveys an interest in land" McDaniel, 265 S.C. at 242-43, 217 S.E. 2nd 755-76 (requiring that the grantor must have an intent to defraud)." Id. at 400 S.C. 398.

The allegations of paragraph 87, 88, 89, 90 and 91 of the Amended Complaint alleging the unqualified offer of the deed, the grantor's purpose to help rather than harm or grandmother, and the offer of the proceeds completely negate any possibility that Appellant can prove that Respondents acted with the intent to defraud in the alleged transfer of the sales proceeds.

CIVIL CONSPIRACY

Perhaps the most callously pernicious allegation of the Amended Complaint directed at the daughter and granddaughter is that of civil conspiracy.

As defined by the Court of Appeals in *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 170, 682 S.E. 2nd 871 (Ct. App. 2009), the tort has three elements:

> "1) A combination of two or more persons, 2) for the purpose of injuring the Plaintiff, and 3) causing Plaintiff special damages." Id. at 682 S.E. 2nd 874.

Appellant has pled, that the deed to the Subject Property was offered by Respondent Inman (Amended Complaint, paragraph 87, R. p. 273); that her purpose and state of mind was "...trying to help my grandmother." (Amended Complaint, paragraph 88, R. p. 273); and that Respondent

Inman stated "I did make attempts to give that lump sum to them to show my appreciation for the gift." (Amended Complaint, paragraph 91, R. p. 274).

The Amended Complaint does not allege that Respondent Inman lied about her state of mind in regards to the offer of the deed to the subject property and the sales proceeds.

Having affirmatively pled that Respondent Inman's state of mind was to "help her grandmother" (Amended Complaint, paragraph 88, R. p. 273) and "to show appreciation for the gift" (Amended Complaint, paragraph 91, R. p. 274), Appellant cannot possibly satisfy the second of the three elements of civil conspiracy, the mutual intent of Respondents to harm Mrs. Clarkin.

In an effort to plead the third element of civil conspiracy, the Appellant seeks to cast its attorney fees for the prosecution of the lawsuit against Respondent Kennedy as special damages (Amended Complaint, paragraph 123, R. p. 278). Attorney fees for the prosecution of this action are not damages, special or otherwise, but merely unrecoverable legal fees since recovery is neither authorized by statute or specified by contract.

Under limited circumstances, attorney fees may be recovered as damages.

In order to claim attorney fees as damages from Respondent Kennedy, Appellant must show that 1) it has become involved in a legal dispute either because of a breach of contract or because of tortuous conduct; 2) that the dispute was with a third party (not a dispute with Respondent Kennedy herself); and 3) that it has incurred attorney fees connected with that dispute. See *McCoy v. Greenwave Enterprises, Inc.*, 408 S.C. 355, 360, 759 S.E. 2nd 136 (2014).

Such a claim would be one for equitable indemnification, which also requires a showing of some special relationship between the parties. Id. at 408 S.C. 359. Of course, the type of special relationship necessary to support such a claim, would be a legal one such as a contractual or

fiduciary relationship not merely the family relationship alleged in paragraph 114 of the Amended Complaint (Amended Complaint, paragraph 114, R. p. 276).

Further, any damages suffered by the Appellant cannot have been the result of any unlawful combination between Respondents, but rather caused by its own refusal of the deed to the subject property (Appellant's Brief, page 25). The admission that Appellant made a reasoned and conscious decision not to accept the deed breaks the chain of causation as to any alleged damages incurred by the Appellant.

The four corners of the Amended Complaint clearly indicate that Appellant cannot possibly prove the second and third elements of the tort of civil conspiracy, therefore Judge Price's Order should be affirmed.

CONSTRUCTIVE TRUST

A concise explanation of the equitable doctrine of constructive trust is found in *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 732 S.E. 2nd 876 (2012) wherein the Supreme Court stated:

> "An action to declare a constructive trust is in equity, and a reviewing court may find facts in accordance with its own view of the evidence. *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E. 2nd 559, 561 (1987). "A constructive trust lies whenever the circumstances under which property was acquired make it inequitable that it should be retained by one holding legal title." Id. at 529, 354 S.E. 2nd at 560. It "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which give rise to an obligation in equity to make restitution." Id. "It is resulted to by equity to vindicate right and justice or frustrate fraud." *Whitmire v. Adams*, 273 S.C. 453, 457, 257 S.E. 2nd 160, 163 (1979). In addition, the standard of proof is high, in that "to establish a constructive trust the evidence must be clear, definite, and unequivocal." *Lollis*, 291 S.C. at 530, 534 S.E. 2nd at 561; see *Whitmire*, 273 S.C. at 458-61, 257 S.E. 2nd at 163-65. Id. at 400 S.C. 6, 732 S.E. 2nd 879.

Here, the Amended Complaint alleges no confidential or fiduciary duty on Respondent Kennedy.

Fraud is an essential element to the claim of constructive trust, although it may not be actual fraud. See *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E. 2nd 852, 856 (Ct. App. 2009). Having pled that the subject property was without qualification offered to the Appellant (Amended Complaint, paragraph 87, R. p. 273); that the offer was made by Respondent Inman to help her grandmother (Amended Complaint, paragraph 88, R. p. 273) and arguing that the offer was declined after reasoned deliberation (Appellant's Initial Brief, page 25); any ability to prove that Respondent Kennedy acted fraudulently or even inequitably is precluded.

The facts as alleged in the Amended Complaint are analogous to the circumstances in *McDaniel v. Kendrick*, Id. at 688 S.E. 2nd 858, wherein the party claiming imposition of a constructive trust upon a home, based her argument on the belief that she acquired an interest in the property because it had served as her marital home and that she had made monetary contributions toward its purchase. The Court noted that she had forfeited a divorce action in which the issues of her special equity could have been determined, therefore, the Court of Appeals did not address her claim to impose a constructive trust.

Similarly, once Appellant abandoned its opportunity to exercise actual titled ownership to the subject property, it can hardly now ask the court to ignore its own abandoned opportunity and maintain an equitable claim against Respondent Kennedy concerning the sale proceeds.

As pled, Appellant cannot possibly prove a beneficial ownership interest in the subject property or the proceeds of its sale. The proceeds were legally and beneficially owned by Respondent Inman and therefore the Amended Complaint alleges no actionable claim of constructive trust obligating Respondent Kennedy to Appellant.

UNJUST ENRICHMENT

As stated in *Inglese v. Beal*, 403 S.C. 290, 742 S.E. 2nd 687 (Ct. App. 2013) "a party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." Id. at 742 S.E. 2nd 690.

The remedy for an alleged unjust enrichment is restitution.

> "The remedy for unjust enrichment is restitution. See *Saumer v. Pub. Serv. Auth. Of S.C.*, 354 S.C. 397, 409, 581 S.E. 2nd 161, 167 (2003)("restitution is a remedy designed to prevent unjust enrichment"). To recover restitution in the context of unjust enrichment, the Plaintiff must show: (1) he conferred a non-gratuitous benefit on Defendant; (2) the defendant realized sum value for the benefit; (3) it would be inequitable for the defendant to retain the benefit without paying the Plaintiff for its value:" (Citations omitted) Id. at 742 S.E. 2nd 691.

For the same reason that the claim of constructive trust fails, the claim of unjust enrichment fails.

Equity does not require Respondent Kennedy to restore to Appellant an asset ownership of which has been waived and abandoned by the Appellant's refusal to accept title to the subject property when offered.

The benefit allegedly conferred upon Respondent Kennedy was not conferred upon her by the Appellant but by Respondent Inman. According to the Amended Complaint, Respondent Inman took the "...the vast majority of those proceeds of sale and provided them to Kennedy in the form of a check for $85,000.00 (hereinafter "disputed funds in Kennedy's possession to invest and hold on behalf of Defendant.") (Amended Complaint, paragraph 71, R. p. 271).

Appellant has no claim that it conferred any benefit upon Respondent Kennedy and therefore cannot satisfy the first element of restitution to cure an unjust enrichment.

Neither does the Amended Complaint allege that Respondent Kennedy realized any personal benefit from the transfer of the proceeds since Appellant pled, also in paragraph 71, that the funds were "...to invest and hold on behalf of Defendant.", referring to Respondent Inman not the Appellant (Amended Complaint, paragraph 71, R. p. 271).

It is evident from the four corners of the Amended Complaint that Appellant's unjust enrichment claim fails as a matter of law.

II. THE APPELLANT DOES NOT HAVE STANDING TO BRING THIS ACTION AGAINST RESPONDENT KENNEDY.

Since 2006 Muriel Clarkin has maintained a home equity line of credit (HELOC), initially with Wachovia Bank, now Wells Fargo, and secured by property she formerly owned at 602 Atlantic Street, Mt. Pleasant, South Carolina 29464 (Amended Complaint, paragraph 8, R. p. 264).

In 2008, Mrs. Clarkin either loaned or gifted Respondent Inman, approximately $138,000.00 to enable Inman to purchase a property at 316 Elrod Drive, Goose Creek, South Carolina 29445 (Amended Complaint, paragraph 10, R. p. 264).

According to Appellant's Memorandum in Opposition to Respondent Kennedy's Motion to Dismiss in 2013, Mrs. Clarkin recorded a deed transferring to her other daughter, Patricia Smith, a half interest in HELOC property and in November 2014, Mrs. Clarkin conveyed to Smith the other half interest in the HELOC property (Plaintiff's Memorandum in Opposition, footnote 1, R. p. 505).

It is alleged that both Respondent Inman and Patricia Smith have made monthly payments upon the HELOC (Amended Complaint, paragraph 24, R. p. 266).

The Amended Complaint does not allege that the Appellant has made payments subsequent to the conveyance of the HELOC property to Smith.

In *Youngblood v. South Carolina Department of Social Services*, 402 S.C. 311, 741 S.E. 2nd 515 (2013), the Supreme Court recognized three types of standing:

> "Standing, a fundamental prerequisite to instituting an action, may exist by statute, through principals of constitutional standing, or through the public importance exception. *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E. 2nd 40, 43 (2012). Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation. See id. at 194-95, 728 S.E. 2nd at 44-45; *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 97 In. 2, 118 S. Ct. 1003, 140 L. Ed. 2nd 210 (1998)(stating the issue of statutory standing as 'whether this Plaintiff has the cause of action under the statute')." When no statute confers standing, the elements of constitutional standing must be met. To possess constitutional standing, first, a party must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E. 2nd 337, 339 (2008). (Quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 Sup. Ct. 2130, 119 L. Ed. 2nd 351 (1992). Second, a causal connection must exist between the injury and the challenged conduct, Id. Finally, it must be likely that a favorable decision will redress the injury." Id. at 402 S.C. 317-18.

Since no statutory or public importance standing is alleged, Appellant must plead facts to demonstrate all three elements of constitutional standing.

The second element of constitutional standing, that a causal connection must exist between the alleged injury and the challenged conduct of Respondent Kennedy, which cannot possibly be proven as plead. The alleged injury, Respondent Kennedy's possession and retention of the sale proceeds from the subject property, was caused not by Respondent Kennedy but by Appellant's own intentional, but improvident, refusal to accept title to the subject property. But for such refusal, no sale proceeds would exist. Appellant's own conduct broke any chain of causation required to confer standing upon the Appellant.

Although Appellant has tried to distance its self from any claims related to the HELOC, it nevertheless seeks to intertwine allegations of a debt, indistinguishable from the HELOC, upon Respondents. The fact that Appellant acknowledges that it has no interest in the HELOC property and does not allege that it is making interest payments further demonstrates that it has no standing to demand that Respondent Kennedy be responsible for contribution to its repayment.

Appellant's pleadings conclusively demonstrate that it has no standing to sue Respondent Kennedy under the alleged facts.

CONCLUSION

The trial judge's orders dismissing the Amended Complaint against Respondent Kennedy and denying the motion for reconsideration should be affirmed.

June 8, 2021

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Bentley D. Price, Circuit Court Judge
Case No. 2017-CP-10-05426

Appellate Case No. 2020-001132

Family Services, Inc., as Conservator for Muriel W. Clarkin,.....Appellant,

v.

Bridget D. Inman, Muriel C. Kennedy, and Patricia Clarkin Smith, ...Respondents

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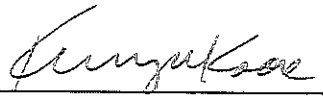
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), S.C.A.C.R.

June 8, 2021



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