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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

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Appellate Case No.: 2018-002272  
Unpublished Opinion No. 2022-UP-023 (S.C. Ct. App. filed January 12, 2022)

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

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.

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**PETITION FOR WRIT OF CERTIORARI**

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Douglas N. Truslow (SC Bar No. 5642)  
TRUSLOW & TRUSLOW  
Post Office Box 1465  
Columbia, South Carolina 29202  
(803) 256-6276  
**ATTORNEYS FOR PETITIONER**

**Other Counsel of Record:**

Edward B. Davis (SC Bar No. 16713)  
BELL, DAVIS & PITT, PA  
227 West Trade Street, Suite 1800  
Charlotte, North Carolina 28202  
(704) 227-0400

**ATTORNEYS FOR RESPONDENT**

## INDEX

Certificate of Counsel .....	1
Questions Presented .....	1
Statement of the Case.....	2
Procedural Overview.....	4
Arguments	
1. THE COURT OF APPEALS ERRED IN DETERMINING THAT IT LACKED JURISDICTION TO CONSIDER THE ISSUE PRESENT ON APPEAL, RULING INSTEAD THAT SOUTH CAROLINA LACKED SUBJECT MATTER JURISDICTION SINCE THE ACTION SUPPOSEDLY REQUIRED A DETERMINATION OF TITLE TO REAL ESTATE, WHICH WAS NOT TRUE.....	5
2. THE COURT OF APPEALS ERRED IN <i>SUA SPONTE</i> DISMISSING A DEFENDANT WHO DID NOT SEEK DISMISSAL OF THE ACTION AGAINST IT AT THE TRIAL COURT, AND WHICH HAD ACKNOWLEDGED THE COURT HAD PERSONAL JURISDICTION OVER IT.....	7
3. THE COURT OF APPEALS ERRED IN REFUSING TO ADDRESS THE MERITS OF THE ISSUES PRESENTED, <i>I.E.</i> WHETHER THE LAWYERS FACILITATING TRANSFER OF THE REAL ESTATE ASSETS (WHILE SIMULTANEOUSLY DEFENDING AGAINST THE EVENTUAL JUDGMENT THAT WOULD HAVE ENCUMBERD THE REAL ESTATE BUT FOR THE LAWYER’S INTENTIONAL ASSISTANCE IN HIDING ASSETS) CAN BE HELD LIABLE FOR DAMAGES FOR CONSPIRACY TO ASSIST IN THE FRAUDULENT CONVEYANCES .....	7
Conclusion .....	8

Pursuant to Rule 242, SCACR, Appellant, Desa Ballard as Successor Trustee of the Irrevocable Trust of Chris Combis (hereafter “Ballard”) petitions this Honorable Court for an order granting a Writ Certiorari to review the decisions of the Court of Appeals, which appear at App. pp. 1-4.

### **CERTIFICATE OF COUNSEL**

Counsel for Ballard certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 7, 2022.

### **QUESTIONS PRESENTED**

1. Did the Court of Appeals err in determining that it lacked jurisdiction to consider the issue presented on appeal, ruling instead that South Carolina lacked subject matter jurisdiction since the action supposedly required a determination of title to real estate, which was not true?
2. Did the Court of Appeals err in *sua sponte* dismissing a defendant who did not seek dismissal of the action against it at the trial court, and which had acknowledged the court had personal jurisdiction over it?
3. Did the Court of Appeals err in refusing to address the merits of the issues presented, *i.e.*, whether the lawyers facilitating transfer of the real estate assets (while simultaneously defending against the eventual judgment that would have encumbered the real estate but for the lawyer’s intentional assistance in hiding assets) can be held liable for damages for conspiracy to assist in the fraudulent conveyances?<sup>1</sup>

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<sup>1</sup> The Court of Appeals did not address this issue, concluding erroneously that the instant action was one which required a determination of title which prevented the Court from addressing the merits of the issue presented.

## STATEMENT OF THE CASE

This action is appropriate for consideration on writ of certiorari pursuant to Rule 242(b)(1 and (3). Not only does the case raise novel questions of law, and/or applicable of existing precedent to novel facts, the Court of Appeals affirmed the decision based on a ground that was not argued and was raised *sua sponte*.

Since this action was decided on a motion to dismiss, the allegations of the complaint (and amended complaint) are deemed true. *Turner v. ABC Jalousie Co. of N.C.*, 251 S.C. 92, 160 S.E.2d 528 (1968); *Hambrick v. GMAC Mortgage Co.*, 370 S.C. 118, 634 S.E.2d 5 (Ct.App. 2006). The admitted allegations are that respondents Jones and O'Brien knowingly assisted their clients in effecting fraudulent conveyances of real estate for the purpose of evading a pending judgment in favor of Ballard. (App. 318).

In 2012, Petitioner Desa Ballard was named by the Lancaster County probate court to serve as personal representative of the estate of the late Chris Combis, who died while a resident of Lancaster county. (App p. 119 ¶ 32, p. 148). Shortly thereafter, she also became the successor trustee of a revocable trust created during the decedent's lifetime. (App. p. 119, ¶ 35).

In 2013, in her representative capacities, Ballard brought suit against George Combis, an adult son of the decedent, and Diane Combis (George's wife), who had served as the trustee prior to Ballard's appointment, to recover for monies due from them and the company owned by George to the Estate and the Trust. (App. p. 120) The various matters were consolidated in the state court, and then removed by Diane Combis to United States District Court, where they were adjudicated on the merits. (App. pp. 107-140). In her capacity as trustee, Ballard was awarded judgment against George and Diane in favor of the trust, but no relief was ordered for the estate. *Id.*

On appeal to the Fourth Circuit Court of Appeals, the judgment in favor of the trust against George was vacated, leaving the judgment against Diane in place. (App. pp. 144-159). The Fourth Circuit also reversed the district court’s dismissal of Ballard’s claims on behalf of the estate and remanded for further proceedings. *Id.* In further proceedings before the District Court, Ballard obtained a judgment in favor of the Estate against a North Carolina corporation owned solely by George in the amount of \$487,845.31. (Order dated January 3, 2020, *Ballard v. Combis*, Case No. 0:14-cv-2819-JFA).

During the pendency of the District Court Case, and while their law firm was defending George and Diane in the Ballard litigation, lawyers who worked in the same firm as counsel defending George and Diane prepared deeds transferring North Carolina property owned by George and/or George and Diane so as to prevent the eventual judgment that was expected following trial from attaching to the assets.<sup>2</sup> The lawyers acted with “full knowledge that their acts operated to assist. . . fraudulent transfers of real property.” (App. pp. 265-260).

The first transfer was of residential property owned by George and Diane that was adjacent to a home owned by their son Chris and his then-wife Lauren. (App. p. 195 - p. 202; p. 267, paragraph 20).<sup>3</sup> This transfer occurred in October 2015, about six months prior to the trial in the United States District Court. The deed was prepared and recorded by an attorney with the same law firm which was defending George and Diane in the District Court case.

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<sup>2</sup> The estimated value of the two properties conveyed with the assistance of George & Diane’s counsel was more than \$3 million dollars. The additional judgment obtained by Ballard on behalf of the estate after remand by the Fourth Circuit, with interest, now exceeds \$500,000.00.

<sup>3</sup> Chris and Lauren sold their home and adjacent lot (conveyed to them by Gorge and Diane, for approximately \$1,920,000.00 in October 2015. (App. pp. 193-195)

Trial in the district court began in the summer of 2016. Immediately before trial, another attorney in the same firm assisted George and Diane in transferring commercial property they owned jointly in downtown Charlotte on which was housed a part of the business started by the decedent and then operated by George. George conveyed all of his interest in the property to Diane. (App. P. 205-208).<sup>4</sup>

In 2017 Ballard brought this action against Diane, Chris (George & Diane's son), the law firm which defended George and Diane while also assisting in the fraudulent conveyances, and the two individual lawyers who handled the property transfers. (App. p. 264-276). An amended complaint was allowed to add a claim for damages for yet another fraudulent transfer in which the lawyer respondents assisted. (App. 318).

### **PROCEDURAL OVERVIEW**

Respondents Jones and O'Brien moved to dismiss the complaints against them,<sup>5</sup> and the trial judge granted the motions, finding that Ballard had failed to state a claim against the lawyer defendants "on the basis that an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation," citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995).

Ballard appealed, to the Court of Appeals, raising a single issue, *i.e.*, whether the trial court erred in applying existing South Carolina precedent to providing immunity for lawyers, when those

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<sup>4</sup> During trial, Diane listed this real estate for sale for \$2.8 million dollars. (App. P. 209-210).

<sup>5</sup> Defendant Redding Jones, LLC, the law firm which employed the lawyers, did seek dismissal based on lack of personal jurisdiction. Jones and O'Brien also argued that South Carolina lacked minimum contacts such that they were not subject to personal jurisdiction in South Carolina.

lawyers knowingly assisted in fraudulent conveyances while defending the pending lawsuit which led to the judgment that would have attached to the assets had they not been fraudulently conveyed away.

Ballard moved to argue against precedent, to the extent it was necessary to do so, but further argued that existing precedent did not provide immunity when the lawyers knowingly assisted in the fraud perpetrated by the client. (App. Pp. 28-30). The Court of Appeals granted the petition. (App. pp. 8-9).

The Court of Appeals failed to decide the issue before it, finding that the South Carolina court lacked jurisdiction because issues regarding title to real property must be litigated in the state where the real property is *in situ*. (App. p. 7). However, the Court of Appeals affirmed on what appeared to be additional sustaining grounds,<sup>6</sup> finding that South Carolina lacked personal jurisdiction over Jones and O'Brien, and that the South Carolina courts lacked jurisdiction to answer the issue on appeal because it required an examination into title to property. (App. p. 7).

### **ARGUMENT 1**

Ballard's position on appeal was that existing precedent did not address the circumstance where a lawyer knowingly assists a client in executing a fraudulent conveyance for the purpose of avoiding creditors. As pleaded, the Respondent lawyers knew they were assisting in the fraud and they knew they were doing so because a significant judgment against their clients was very likely to be awarded. Ballard sought damages.

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<sup>6</sup> As discussed below, Respondents argued improper venue on appeal. However, the Court of Appeals *sua sponte* raised subject matter jurisdiction as a basis to affirm the circuit court.

Ballard made clear to the trial court and to the Court of Appeals that title to the property was not in dispute.<sup>7</sup> (App. p. 56 footnote 7 in Appellant’s brief). While Respondents argued on appeal (as an additional sustaining ground) that venue in Lancaster was not appropriate, Respondents did not argue that title to the property needed to be determined or that an action for damages required a finding of title.

The Court of Appeals *sua sponte* raised the issue of determining title as an element of an action for damages for fraudulent conveyances, which was error. *Crenshaw v. Erskine College*, 432 S.C. 1, 850 S.E.2d 1 (2020). The Court of Appeals did not cite any precedent from this court or from its own prior decisions that finds that requires a finding of title to real property as an element of an action for damages for fraudulent conveyances.

Most precedent involving fraudulent conveyances in published authority in South Carolina seek equitable relief. S.C. Code Section 27-23-10(A); *See Oskin v. Johnson*, 400 S.C. 390, 735 S.E.2d 459 (2012). This action, however, sought damages for engaging in a tort, *i.e.*, conspiracy to assist in making fraudulent conveyances. The standard of proof is different, the burden of proof is different and the relief sought is different. Rule 18, SCRCF expressly allows an action for fraudulent conveyances that does not seek equitable relief, but only damages. The inquiries are completely separate. *See e.g., Myatt v. RHBT Financial Corporation*, 370 S.C. 391, 635 S.E.2d 545 (Ct.App. 2006).

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<sup>7</sup> While Ballard’s initial complaint did seek to affect title to the property, the amended complaint omitted any reference to equitable relief being granted in this action. (App. p. 318).

Ballard respectfully urges the Court to grant a writ of certiorari to examine the issue summarily dealt with by the Court of Appeals, *i.e.* that South Carolina courts cannot entertain actions for damages for fraudulent conveyance when the real property involved is located in a different state.

Alternately, Ballard asserts that the error of the Court of Appeals is so obvious that this Court could grant the petition, vacate the decision of the Court of Appeals and remand to address the only issue raised by Ballard on appeal. *State v. Hernandez*, 428 S.C. 257, 834 S.E.2d 462 (2019); *Conits v. Conits*, 421 S.C. 391, 807 S.E.2d 695 (2017).

## **ARGUMENT 2**

Because the Court of Appeals affirmed on the basis of its *sua sponte* ruling that a determination of title was required for the merits of this action to be addressed by a South Carolina court, the opinion did not examine the existence of Defendant Redding Jones PLLP, which had not contested that the Court had personal jurisdiction over it.

By affirming in total based on an issue not raised by the parties, the effect of the Court of Appeals decision was to grant dismissal to a party who had not sought to be dismissed from the case.

## **ARGUMENT 3**

As set forth in detail in her Appellant's brief, Ballard explained why existing precedent did not address this circumstance, and with the admission of knowledge which must be presumed on a motion to dismiss, dismissal was not appropriate when the pleading alleged that the lawyers actually and knowingly participated in the fraud. (App. pp. 55). Existing precedent provides

immunity only when the lawyer is acting in “good faith.” *Gaar v. North Myrtle Beach*, 287 S.C. 525, 339 S.E.2d 887 (1986)

This issue is included in the Petition for Writ because the Court of Appeals did not address it. Relief from this Court on the remaining issues raised in the petition would likely result in this issue being remanded to the Court of Appeals to address the issue that was not decided.

### **CONCLUSION**

For the reasons set forth above, the Court of Appeals’ decision in this case was error. Ballard prays for an order granting a writ of certiorari to review the decision, or in the alternative, an order vacating the Court of Appeals’ decision and remanding for the Court of Appeals to rule on the issue raised on appeal.

Respectfully submitted,

**/s Douglas N. Truslow**  
Douglas N. Truslow (SC Bar No. 5642)  
TRUSLOW & TRUSLOW  
Post Office Box 1465  
Columbia, South Carolina 29202  
T. (803) 256-6276  
F. (803) 256-7659  
douglastruslow@truslowlaw.com  
**ATTORNEY FOR APPELLANT**

March 9, 2022  
Columbia, South Carolina

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Simon John O'Brien, and Kent D. Jones are, ..... Respondents.

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**PROOF OF SERVICE**

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I, Mackenzie Woodward, paralegal with Truslow & Truslow, do hereby certify that on March 9, 2022, I served a copy of the **Petition for a Writ of Certiorari**, in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

**The Court of Appeals**  
**ctappfilings@sccourts.org**

**Edward B. Davis, Esquire**  
**Bell, Davis & Pitt, PA**  
**[ward.davis@belldavispitt.com](mailto:ward.davis@belldavispitt.com)**

March 9, 2022

*Mackenzie Woodward*  
\_\_\_\_\_  
Mackenzie Woodward, Paralegal

# Truslow & Truslow

Attorneys At Law

www.truslowlaw.com

Telephone: 803-256-6276 Fax: 803-256-7659

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**Mar 09 2022**

**SC Court of Appeals**

Douglas N. Truslow  
*douglastruslow@truslowlaw.com*

Neal D. Truslow  
*nealtruslow@truslowlaw.com*

*Physical Address:*  
914 Richland Street, Suite B-102  
Columbia, SC 29201

*Mailing Address:*  
P.O. Box 1465  
Columbia, SC 29202

March 9, 2022

Re: *Desa Ballard. v. Diane Combis, et al.*  
Appellate Case No.: 2018-002272

Via Electronic Mail ([suptctfilings@sccourts.org](mailto:suptctfilings@sccourts.org))

The Honorable Patricia Howard  
Supreme Court Clerk of Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Dear Ms. Howard:

Please find enclosed a Petition for a Writ of Certiorari and the required Appendix. Pursuant to paragraph (c) of the Supreme Court's administrative order dated August 25, 2021 ("Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules") a check for the filing fee is being forwarded via US mail.

Please note that we are submitting the Supplemental/Amended complaint which was not previously filed in the Record on Appeal. It was omitted in error, as we only included pleadings up to the date the Notice of Appeal was filed and did not include any pleadings filed after that date.

By copy of this letter and as evidenced by the Proof of Service, this filing has been served upon counsel for the Respondent. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

Sincerely,

*Mackenzie Woodward*

Mackenzie Woodward  
Paralegal for Truslow and Truslow

Enclosures

cc: Via Electronic Mail  
The Court of Appeals  
Edward Davis, Esquire