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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Stephanie P. McDonald, Circuit Court Judge

Op. No. 5588 (S.C. Ct. App. refiled February 27, 2019)

Case No. 2010-CP-10-10490
Appellate Case No. 2015-001590

Brad J. Walbeck and Lea Ann Adkins, Both Individually and Derivatively on Behalf of The I'On Assembly, Inc.; and I'On Assembly, Inc.,

Petitioners-Respondents,

v.

The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC f/k/a Civitas, LLC, and I'On Realty, LLC,

Respondents-Petitioners.

Reply Brief of Respondents-Petitioners

Brian C. Duffy (SC Bar #16247)
Julie L. Moore (SC Bar #78677)
Patrick C. Wooten (SC Bar #77985)
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044

Attorneys for Respondents-Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ARGUMENT

I. The Court of Appeals erred in applying the two-issue rule.

a. Plaintiffs misconstrue the Court of Appeals' ruling.

In their Response Brief, the plaintiffs at trial ("Plaintiffs") first argue that the Court of Appeals' application of the two-issue rule was based on the defendants at trial (the "I'On Defendants") challenging only one of five standalone grounds identified in the trial court order for finding the easement at issue (the "2000 Recreational Easement") invalid and void *ab initio*. (Resp. Br. pp. 4-5.) Plaintiffs argue that the Court of Appeals held that, on appeal, the I'On Defendants were required to challenge each of these five standalone grounds in the trial court's order. (*Id.*) Plaintiffs are incorrect.

The Court of Appeals applied the two-issue rule based only on its determination that the trial court held that the 2000 Recreational Easement was void *ab initio* because it was not created through an arms-length transaction, and because on appeal the I'On Defendants supposedly did not separately challenge this basis for the trial court's ruling. (*See* App. p. 24 ("However, Appellants did not appeal all of the grounds specifically listed by the circuit court to support its declaration of invalidity. *Namely, they failed to challenge the circuit court's conclusion that the Recreational Easement was not an arms-length transaction.*") (Emphasis added.)

b. The trial court order did not identify five standalone grounds for finding the 2000 Recreational Easement invalid and void *ab initio*.

Plaintiffs argue that the Conclusion paragraph of the trial court's order identifies five separate, standalone grounds for finding the 2000 Recreational Easement invalid and void *ab initio*. Plaintiffs are incorrect.

The trial court's order is comprised of the following five sections: (1) an introduction; (2) a "Summary of Pertinent Background Facts"; (3) a "Legal Discussion"; (4) a section entitled "Equitable Concerns"; and (5) a "Conclusion." (R. pp. 70-78.) Only the "Legal Discussion" section includes standalone grounds for the trial court's determination that the 2000 Recreational Easement was invalid and void *ab initio*. Specifically, the "Legal Discussion" section has two subsections, each of which provides a separate, standalone ground for trial court's ruling. The first subsection is entitled: "The 2000 Recreational Easement is Invalid Because the Granting Party Did Not Own the Subject Property at the Time of Execution." (R. p. 73.) This subsection unambiguously identifies—both in its heading and in the discussion under the heading—a standalone ground for the Court's ruling that the 2000 Recreational Easement was void *ab initio*. (*See id.*; *see also* R. p. 74 ("Accordingly, the 2000 Recreational Easement is invalid as a matter of South Carolina law, and thus, void *ab initio*."). The same is true with respect to the second subsection. (R. p. 74 (Heading: "The Assembly's Purchase of the Amenity Property Created a Merger and Subsequent Termination of the Easement." Discussion: "As such, the terms of the 2000 Recreational Easement . . . were effectively terminated when the Assembly acquired title to this property in accordance with the Settlement Agreement.")[1]

[1] On appeal, the I'On Defendants challenged the trial court's first standalone ground—namely, the fact that the grantor of the easement did not acquire title to the servient property until six months after the easement's execution—based on the after-acquired property doctrine. (App. pp. 155-58.) The I'On Defendants also confirmed that they were not appealing the trial court's second standalone ground—that certain terms in the 2000 Recreational Easement were terminated by virtue of the merger that occurred in 2014—and are only challenging the determination that the 2000 Recreational Easement was not valid during the period of 2000 through 2014. (R. pp. 155-56.) Accordingly, this issue is material only in the event that this Court's decision

By contrast, the "Equitable Concerns" section of the trial court's order does not identify—in its heading, or in the discussion under its heading—standalone grounds for finding that the 2000 Recreational Easement was void *ab initio* or for finding that it was terminated in 2014. (*See generally* R. pp. 75-77.) Instead, this section discusses various "equitable concerns" that caused the trial court to refuse to permit the I'On Defendants to rely on the equitable doctrine of after-acquired property. (*Id.*) In the Conclusion section, the trial court identifies the two standalone grounds discussed in the "Legal Discussion" section, along with three factors that the trial court mentioned in its "Equitable Concerns" section. (R. p. 78.) These equitable concerns are "(b) the 'perpetual' terms of the 2000 Recreational Easement are ambiguous; (c) the 2000 Recreational Easement was not an arms-length transaction; [and] (d) the 2000 Recreational Easement was not in the best interest of the Assembly." (*Id.*)

Importantly, in their appellate brief, the I'On Defendants discuss equitable considerations at length—including equitable considerations relating to the 2000 Recreational Easement specifically and equitable considerations relating to the I'On Defendants' and Plaintiffs' conduct more generally. (*See* R. pp. 156-60; *see generally* R. pp. 124-84.) The I'On Defendants also specifically argue that the relevant terms of the 2000 Recreational Easement were perpetual and not limited to thirty years (R. pp. 158-60) and argue that the 2000 Recreational Easement was in the best interests of the Assembly (R. pp. 157-58). Although the I'On Defendants' appellate brief did not specifically discuss the trial court's reference to the 2000 Recreational Easement not

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necessitates further proceedings below which will revisit the legal implications during that earlier time period of 2000 through 2014.

being an "arms-length transaction," this was not (and under South Carolina law could not have been) a standalone ground for the trial court's ruling for all of the reasons discussed in the I'On Defendants' initial Brief filed with this Court. (I'On Defs. Br. at 9-13.)[2] Thus, the two-issue rule does not apply to the I'On Defendants' appeal of the trial court's holding that the 2000 Recreational Easement was void *ab initio*, and this Court should reverse this portion of the Court of Appeals' opinion and address the merits of the appeal relating to the 2000 Recreational Easement.

c. Plaintiffs' reliance on the Statute of Elizabeth and on cases involving fraudulent conveyances and undue influence is misplaced.

The trial court cited no law that could support deeming the 2000 Recreational Easement void *ab initio* based solely on the easement being created through a "non-arms-length transaction." Indeed, no such law exists, which is one of several reasons why the trial court order should not be interpreted as treating the "non-arms-length transaction" finding as a standalone basis for its ruling. Although Plaintiffs did not make this argument to the trial court, Plaintiffs now argue that South Carolina law does, in fact, support invalidating the 2000 Recreational Easement on the basis that it was not created through an arms-length transaction. Plaintiffs are incorrect, and the law Plaintiffs cite in connection with this argument is inapposite.

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[2] In their initial Brief, the I'On Defendants argued that the lack of an arms-length transaction was not a standalone ground for the trial court's ruling because, among other things, the trial court merely stated that the lack of an arms-length transaction was "sufficient to give this court pause," which is different from holding that the lack of an arms-length transaction provides a standalone basis for deeming the 2000 Recreational Easement void *ab initio*. (I'On Defs. Br. at 9-10.) Plaintiffs ignore this point in their Response Brief.

The first case Plaintiffs cite on this issue is a more than 100-year old South Carolina Supreme Court decision that held that a deed was not invalid by virtue of undue influence or fraud merely because the transfer was from an elderly father to his son. (Pls. Br. at 7-8 (citing *Wilson v. Wilson*, 117 S.C. 454, 117 S.E. 330 (1921)). In dicta of *Wilson*, this Court noted that there is a presumption against the validity of a transaction between parties in a fiduciary relationship where "the superior party obtains the advantage, or a possible benefit." *Id. Wilson* has no relevance to the 2000 Recreational Easement which was a document granting rights to Plaintiffs, not taking anything away.

Plaintiffs also cite the Statute of Elizabeth and several cases applying that statute. (Pls. Br. at 8-9.) But this law relates to fraudulent conveyances in which a judgment debtor conveys assets to a third party in an effort to prevent the judgment creditor from collecting. Of course, there is no allegation in this case that the 2000 Recreational Easement was an effort to avoid a judgment. Thus, this law is wholly inapposite.

II. The Court of Appeals erred in refusing to apply the after-acquired property doctrine.

The after-acquired property doctrine is an equitable doctrine that "serves to prevent fraud and honors the parties' intentions by defining their obligations according to the terms of the challenged instrument." *Amada Fam. Ltd. P'ship v. Pomeroy*, 494 P.3d 633, 643 (Colo. Ct. App. 2021); *see also Sprinkle v. Am. Mobilephone Paging, Inc.*, 525 So. 2d 1353, 1356–57 (Ala. 1988) (applying the after-acquired property doctrine to enforce the intent of the parties and to achieve an equitable result). In the typical case, a *grantor* (as opposed to a grantee) of property rights denies the validity

of a conveyance on the basis that the grantor obtained title to the servient property after the conveyance. Because it would be unfair to the grantee to invalidate the conveyance merely because the grantor obtained title after the conveyance, and because the parties intended to accomplish the conveyance regardless of the defect in title, the equitable doctrine of after-acquired property treats the conveyance as valid.

This case presents the unusual situation where the *grantee* is denying the validity of the conveyance—and is doing so after enjoying the access rights provided by the conveyance for more than a decade. Typically, a grantee has no reason to deny the validity of the conveyance, and in this case, Plaintiffs have no reason to do so other than for the litigation-driven reason of attempting to artificially inflate their damages.[3] Although this case presents an unusual fact pattern, the policies underpinning the equitable doctrine of after-acquired property apply with equal force to this case as they would in a more conventional case.

Just as it would be unfair for the I'On Defendants to deny the validity of the 2000 Recreational Easement merely because there was a six-month delay in the grantor obtaining title to the servient property, it is unfair for Plaintiffs to deny the existence of the easement on that basis. This is particularly true because the I'On Club, as servient landowner, and the Assembly, as easement holder, operated under the terms of the 2000 Recreational Easement—with respect to both use of the boating facilities and the Assembly's maintenance contributions—for over a decade after the conveyance of the servient property to the I'On Club. (R. p. 615:8-25; R. p. 1074:1-

[3] In their Response Brief, Plaintiffs deny that they are disputing the validity of the 2000 Recreational Easement to artificially inflate their damages, but they do not identify any alternative motive. (Pls. Br. at 2.)

10; R. p. 1329:16-24.) The Assembly also engaged legal counsel to advise it as to the easement, but never suggested any problem with its validity or term. (R. p. 614:5-11; R. p. 1075:13-1076:6; R. pp. 3436-40; R. pp. 3451-53; R. pp. 3459-61; R. pp. 3464-67; R. pp. 3600-01.) Moreover, Plaintiffs are denying the validity of the 2000 Recreational Easement based on a title defect on which the I'On Defendants would not have been able to rely because, if they did, the after-acquired property doctrine would estop the I'On Defendants from doing so. Thus, permitting Plaintiffs to treat the 2000 Recreational Easement as invalid based on a temporary title defect would achieve precisely the type of unfairness that the after-acquired property doctrine is designed to prevent.

Plaintiffs argue that the after-acquired property doctrine does not apply for the following four reasons: (1) the doctrine applies against grantors, not grantees; (2) the doctrine does not apply in favor of a grantee who has notice or knowledge that the grantor lacks title to the property at the time of the conveyance; (3) the doctrine cannot be retroactively applied to the detriment of a good faith purchaser for value; and (4) the doctrine cannot be applied to an easement that no longer exists. (Pls. Br. at 12-14.) But Plaintiffs cite no law in support of any of these arguments. (*See generally id.*)[4] Further, none of Plaintiffs' arguments are consistent with the purpose of the doctrine.

[4] The only cases cited in this section of Plaintiffs' Brief are two cases cited in footnote 11. (*See* Pls. Br. at 13 n.11 (citing *Spencer v. Wiegert*, 117 So. 2d 221, 226 (Fla. Dist. Ct. App. 1959) and *Corbin v. Carlin*, 366 S.C. 187, 620 S.E.2d 745 (Ct. App. 2005)). Plaintiffs do not explain how these cases supposedly support their arguments, and these cases do not, in fact, support Plaintiffs' arguments.

With respect to Plaintiffs' first argument, Plaintiffs cite no case where a court has refused to apply the doctrine against a grantee, nor do Plaintiffs attempt to explain why applying the doctrine in this case would be inconsistent with its purpose.

Plaintiffs' second argument, contending that the doctrine does not apply in favor of a grantee who has notice or knowledge that the grantor lacks title to the property at the time of the conveyance, is also unpersuasive. In this case, the grantee is the Assembly, and control over the Assembly was not passed from the developer to the homeowners until after the grantor (the I'On Club) obtained title to the servient property in August of 2000, fixing the title defect. (*See* R. p. 791:20-21; R. pp. 3429-3431 (by December of 2003, a majority of the Assembly's board of directors were homeowners without any association with the developer). Refusing to apply the after-acquired title doctrine on this basis would be inconsistent with the goals of preventing unfairness and enforcing the parties' intent.

Plaintiffs' third argument is not entirely clear but seems to be that, because the I'On Defendants sold the servient property in 2009, the after-acquired property doctrine does not apply. Plaintiffs provide no law or policy reason to support this argument, and the I'On Defendants are aware of none. The I'On Defendants are attempting to enforce the after-acquired property doctrine against Plaintiffs, not the third party that purchased the servient property in 2009 (148 Civitas, LLC).

Finally, Plaintiffs argue that the doctrine cannot apply here because the easement terminated in 2014 when the Assembly obtained title to the servient property. But, again, Plaintiffs cite no law in support of this argument, and there is no policy reason to refuse to apply the doctrine merely because the easement no longer exists.

The I'On Defendants are not seeking to establish that the 2000 Recreational Easement remains in existence. Rather, they are asking this Court to reverse the holding that the 2000 Recreational Easement was void *ab initio*.

Because the policies underpinning the after-acquired property doctrine apply with equal force here as they would in a more conventional case, and because Plaintiffs' arguments as to why the doctrine should not apply here are not supported by the law or by policy, the Court should reverse the Court of Appeals' holding that the after-acquired property doctrine does not apply and that the 2000 Recreational Easement was void *ab initio*.

III. The easement is perpetual, not limited to 30 years.

Plaintiffs ask this Court to disregard the language in the 2000 Recreational Easement stating that the easement for use and enjoyment of boating facilities is "a perpetual, nonexclusive easement" and hold that the easement is limited to a 30-year term. (Pls. Br. at 15-17.) But Plaintiffs fail to explain how their interpretation of the easement is consistent with South Carolina law requiring courts to give effect to all of the provisions of deeds and easements if possible. (*See* I'On Defs. Br. at 18 (citing case law).) Plaintiff's interpretation is not consistent with the law, and the Court should reject it as violating this fundamental rule of interpretation.

Plaintiffs also argue that the terms of the 2000 Recreational Easement relating to its duration are, at a minimum, ambiguous, and Plaintiffs argue that the Court is therefore required to construe the ambiguity "in the HOA's favor." (Pls. Br. at 17 n.15.) But construing the ambiguity in the HOA's favor means construing the 2000 Recreational Easement as being perpetual, not as being limited to a 30-year term. Of

course, a perpetual easement grants the HOA *more* rights than a 30-year easement. Indeed, Plaintiffs argue in their Response Brief that the "Easement was against the HOA's best interest . . . because it was limited to a thirty-year term . . . ." (Pls. Br. at 17.)

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the I'On Defendants' initial Brief, this Court should reverse the Court of Appeals' holding that the two-issue rule applies to the I'On Defendants' challenge to the trial court's ruling as to the 2000 Recreational Easement, and this Court should hold that the 2000 Recreational Easement was valid and perpetual.

Respectfully submitted,

Brian C. Duffy (SC Bar #16247)
Julie L. Moore (SC Bar #78677)
Patrick C. Wooten (SC Bar #77985)
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044
Attorneys for Respondents-Petitioners

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