

Filed: April 12, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1389

(2:06-cv-03283-DCN; 2:06-cv-01121-DCN;
2:07-cv-00593-DCN; 2:07-cv-00790-DCN;
2:07-cv-02964-DCN; 2:07-cv-02965-DCN;
2:07-cv-02992-DCN)

KEVIN CAMPBELL, Chapter 7 Trustee; GENERAL HOLDINGS, INCORPORATED, a California Corporation; ALAN M. GRAYSON; AMG TRUST; ROBERT G. SABELHAUS; MELANIE R. SABELHAUS; NEWTON FAMILY LLC; WCN-GAN PARTNERS LTD, a Colorado partnership,

Plaintiffs - Appellees,

v.

CHARLES D. CATHCART; YURI DEBEVC; EVELYN CATHCART,

Defendants - Appellants,

and

DERIVIUM CAPITAL USA, INCORPORATED; VERIDIA SOLUTIONS, LLC; BANCROFT VENTURES LIMITED; DERIVIUM CAPITAL LLC; SHENANDOAH HOLDINGS LTD; SPENCER PARTNERS LTD; COLIN BOWEN; NIGEL HARLEY WOOD; PAUL ANTHONY JARVIS; ALEXANDER JEEVES; BRYAN JEEVES; THE JEEVES GROUP, a/k/a The Jeeves Company, Ltd, a/k/a Jeeves Holdings Ltd; OPTTECH LIMITED; WITCO; CHARLES HSIN; PTS INTERTECH INCORPORATED; AQUILIUS INCORPORATED; BANCROFT VENTURES UK LTD; ISLE OF MAN ASSURANCE LTD; DMITRY BOURIAK; VISION INTERNATIONAL PEOPLE GROUP PL; TOTAL ECLIPSE INTERNATIONAL LTD; KRISTINA PHELAN; JEEVES HOLDINGS LTD; JAVELIN LTD; LEXADMIN TRUST REG; ST VINCENT TRUST COMPANY LTD; ST VINCENT TRUST SERVICE LTD; WINDWARD ISLES TRUST COMPANY LTD; SELBOURNE TRUST COMPANY LTD; PELICAN TRUST COMPANY LTD; JEEVES GROUP ASIA LTD; WACHOVIA SECURITIES INCORPORATED; JOHN DOE 1; JOHN DOE 2; JOHN DOE 3; JOHN DOE 4; JOHN DOE 5; JOHN DOE 6; JOHN DOE 7; JOHN DOE 8; JOHN DOE 9; JOHN DOE 10; JEEVES COMPANY LTD; ORANGEBURG METAL TREATMENT CO LLC; METARIZON LLC, f/k/a Metarizon

Solutions LLC; RANDOLPH ANDERSON; JONATHAN SANDIFER; PATRICK KELLEY; ROBERT BRADENBURG; NIGEL THOMAS TEBAY; JOANNA OVERFIELD BODELL; JEEVES GROUP OF COMPANIES, a foreign association; DOES 1-20; CHARLES D. CATHCART CRUSADER TRUST; CATHCART INVESTMENT TRUST; CATHLIT INVESTMENT TRUST; DIVERSIFIED DESIGN ASSOCIATED LTD; CLIFFORD LLOYD; DAVID KEKICH; RED TREE INTERNATIONAL; FIRST SECURITY CAPITAL OF CANADA INCORPORATED; MARCO TOY INCORPORATED; WITCO SERVICES UK LTD; MORIA THOMPSON MCHARRIE; DAVID ANTHONY KARRAN; NIGEL HAMPTON MCGOWAN; FRANCIS GERRARD QUINN; PETER KEVIN PERRY; BRIAN BODELL; ANDREW THOMAS; EDWARD J. BUDDEN; JOANNA OVERFIELD BODELL; CONISTON MANAGEMENT LTD; ISLE OF MAN FINANCIAL TRUST LTD; SPENCER VENTURE PARTNERS LLC; LINDSEY AG; JACK W. FLADER, JR.; JAMES C. SUTHERLAND; ZETLAND FINANCIAL GROUP LTD; FRANKLIN W. THOMASON; TSUEI CONSULTANTS INCORPORATED; NOBLESTREET LTD; FINANCIAL RESOURCES GROUP LLC; STRUCTURED SYSTEMS AND SOFTWARE INCORPORATED; EAST BAY CAPITAL VENTURES LLC,

Defendants,

v.

RALPH C. MCCULLOUGH, II,

Movant,

CHARLESTON ALUMINUM LLC; WILLIAM NEWTON; PRIVATE CONSULTING GROUP,

Third Party Defendants.

O R D E R

The Court amends its opinion filed May 25, 2011, as follows:

On the cover sheet caption, the names of Defendants "SCOTT CATHCART," "VERISTEEL INCORPORATED," "SCOTT AND WHITNEY

CATHCART FAMILY TRUST," "WJC FERNHILL RESIDENTIAL TRUST,"
"PERSEVERUS INCORPORATED" and "SDC FERN HILL RESIDENTIAL TRUST"
are deleted.

For the Court - By Direction

/s/ Patricia S. Connor
Clerk

UNPUBLISHED

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CRUSADER TRUST; CATHCART INVESTMENT TRUST; CATHLIT INVESTMENT TRUST; DIVERSIFIED DESIGN ASSOCIATED LTD; CLIFFORD LLOYD; DAVID KEKICH; RED TREE INTERNATIONAL; FIRST SECURITY CAPITAL OF CANADA INCORPORATED; MARCO TOY INCORPORATED; WITCO SERVICES UK LTD; MORIA THOMPSON MCHARRIE; DAVID ANTHONY KARRAN; NIGEL HAMPTON MCGOWAN; FRANCIS GERRARD QUINN; PETER KEVIN PERRY; BRIAN BODELL; ANDREW THOMAS; EDWARD J. BUDDEN; JOANNA OVERFIELD BODELL; CONISTON MANAGEMENT LTD; ISLE OF MAN FINANCIAL TRUST LTD; SPENCER VENTURE PARTNERS LLC; LINDSEY AG; JACK W. FLADER, JR.; JAMES C. SUTHERLAND; ZETLAND FINANCIAL GROUP LTD; FRANKLIN W. THOMASON; TSUEI CONSULTANTS INCORPORATED; NOBLESTREET LTD; FINANCIAL RESOURCES GROUP LLC; STRUCTURED SYSTEMS AND SOFTWARE INCORPORATED; EAST BAY CAPITAL VENTURES LLC,

Defendants,

v.

RALPH C. MCCULLOUGH, II,

Movant,

CHARLESTON ALUMINUM LLC; WILLIAM NEWTON; PRIVATE CONSULTING GROUP,

Third Party Defendants.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, Chief District Judge. (2:06-cv-03283-DCN; 2:06-cv-01121-DCN; 2:07-cv-00593-DCN; 2:07-cv-00790-DCN; 2:07-cv-02964-DCN; 2:07-cv-02965-DCN; 2:07-cv-02992-DCN)

Submitted: April 26, 2011

Decided: May 25, 2011

Before NIEMEYER, MOTZ, and KEENAN, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Charles D. Cathcart, Yuri Debevc, Evelyn Cathcart, Appellants Pro Se. Richard Ashby Farrier, Jr., NELSON MULLINS RILEY & SCARBOROUGH, LLP, Charleston, South Carolina; Joseph Camden Wilson, PIERCE, HERNS, SLOAN & MCLEOD, Charleston, South Carolina; Alisa Joy Roberts, KUBLI & ASSOCIATES, P.C., Vienna, Virginia; Neil Keith Emge, Jr., CARLOCK, COPELAND, SEMLER & STAIR, LLP, Charleston, South Carolina; Hugh Wilcox Buyck, BUYCK LAW FIRM, Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charles Cathcart ("Cathcart"), Evelyn Cathcart ("Evelyn"), and Yuri Debevc ("Debevc") appeal from the judgments entered by the district court following a jury trial and the court's separate findings of fact and conclusions of law in seven district court cases that were consolidated for trial. The jury found in favor of the Trustee, Kevin Campbell, and in favor of Alan Grayson and the AMG Trust on their claims to recover a fraudulent transfer from Evelyn.¹ The jury found in favor of the Plaintiffs and against Defendants Cathcart, Debevc, Veridia Solutions, LLC, and Derivium Capital, LLC,² on the claims for actual and constructive fraudulent conveyance, breach of fiduciary duty, and violations of the Racketeer Influenced Corrupt Organization Act, 18 U.S.C.A. §§ 1961-1968 (West 2006 & Supp. 2010) ("RICO"). The judgments provided for joint and several liability.

In the court's findings of fact and conclusions of law, the district court ruled on the non-jury claims for piercing the corporate veil and alter ego and determined that

¹ District court cases No. 2:07-cv-02992 and No. 2:07-cv-00593.

² Derivium Capital was not named a Defendant in Nos. 2:07-cv-02964 or 2:07-cv-02965, which were filed by Newton Family, LLC, and WCN/GAN Partners, Ltd. against Cathcart, Debevc, and Veridia.

the corporate forms for Derivium and Veridia should be disregarded and Cathcart and Debevc be held personally responsible for the debts of the corporations. Cathcart and Debevc do not challenge on appeal the district court's determination to disregard the corporate form and hold them personally liable for the debts of Derivium and Veridia. Any challenge to this finding is therefore abandoned. See 4th Cir. Local Rule 34(b); Williams v. Giant Food Inc., 370 F.3d 423, 430 n.4 (4th Cir. 2004) (issues not argued in opening brief are deemed abandoned).

Additionally, because the corporations are not parties to this appeal, the claims against the corporations are abandoned and the district court's judgments finding them jointly and severally liable with Cathcart and Debevc are final.

"To qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997) (internal quotation marks omitted). A case fails to meet this requirement where "resolution of an issue could not possibly have any practical effect on the outcome of the matter." Norfolk S. Ry. v. City of Alexandria, 608 F.3d 150, 161 (4th Cir. 2010). In light of the fact that Cathcart and Debevc remain personally liable for the judgments against the

corporations by their failure to appeal the determination to disregard the corporate form and by the corporations' failure to appeal the judgments against them, any resolution of the issues asserted by Cathcart and Debevc would have no practical effect on the outcome of the case. See id. Accordingly, the appeals of Cathcart and Debevc are dismissed.

The only issue properly before the court for resolution is Evelyn's challenge to the sufficiency of the evidence to support the fraudulent conveyance judgments against her. "Recognizing that we may not substitute our judgment for that of the jury or make credibility determinations, if there is evidence on which a reasonable jury may return verdicts in favor of Appellees, we must affirm." Price v. City of Charlotte, North Carolina, 93 F.3d 1241, 1249-50 (4th Cir. 1996) (citations omitted). We have reviewed the evidence presented during the four-week trial in these cases, and we find that the evidence was sufficient to support the jury's verdict. Accordingly we affirm the judgments against Evelyn.

While we grant the Appellants' motion to exceed the length limit on their informal brief, we deny Debevc's motion for transcripts at government expense, affirm the judgments against Evelyn and in favor of Kevin Campbell and Alan Grayson and the AMG Trust, and dismiss the remainder of the appeal. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART