IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-279

Filed: 6 October 2020

Jackson County, No. 19 CVS 625

JON BEBEAU and MURIEL LAVALLEE, Plaintiffs,

v.

JEFFREY JUDSON WOODMAN and KAREN K. WOODMAN, Defendants.

Appeal by plaintiffs from Order entered 14 February 2020 by Judge Steve Warren in Jackson County Superior Court. Heard in the Court of Appeals 8 September 2020.

The Law Firm of Shira Hedgepeth, PLLC, by Shira Hedgepeth, for plaintiffs.

Ridenhour & Goss, P.A., by Eric Ridenhour, for defendants.

ARROWOOD, Judge.

Jon Bebeau and Muriel LaVallee ("plaintiffs") appeal from an "Order and Entry of Summary Judgment," which, *inter alia*, denied plaintiffs' motion to strike and granted Jeffrey Woodman ("Mr. Woodman") and Karen Woodman's ("Ms. Woodman") (collectively, "defendants") motion for summary judgment. For the following reasons, we reverse and remand in part, and affirm in part.

I. Background

In May 2012, Mr. Woodman recorded a special warranty deed for real property located in Jackson County, North Carolina ("Lot 7"). Mr. Woodman was the sole grantee named in the special warranty deed.

Later, in October 2014, plaintiffs contracted with Antares Yachts, LLC, for the construction of a large sailing vessel. Mr. Woodman was the majority owner of Antares Yachts at the time of this contract.

In or around June 2016, before construction commenced on the vessel, Antares Yachts ceased operations due to financial troubles. Plaintiffs subsequently filed suit against Mr. Woodman, Antares Yachts, and others for breach of contract and fraud in the Thirteenth Judicial Circuit in Hillsborough County, Florida ("Florida Case"). The Florida Case was filed on 22 July 2016.

Seven days after the commencement of the Florida Case, on 29 July 2016, Mr. Woodman executed a "Warranty Deed" conveying Lot 7 to himself and his wife, Ms. Woodman, purportedly establishing a tenancy by the entirety. The Warranty Deed was recorded in Jackson County, North Carolina on 2 August 2016. No consideration was exchanged for the transfer.

In April 2017, defendants sold Lot 7 to a third-party purchaser for approximately $450,000.00 and used said proceeds to purchase another property in Cullowhee, North Carolina, which defendants share as tenants by the entireties.

Subsequently, in December 2018, judgment was entered against Mr. Woodman, Antares Yachts, and other defendants named in the Florida Case. Plaintiffs domesticated the Florida judgment for $426,771.20 (plus post-judgment interest) in Jackson County, North Carolina on 4 January 2019. Thereafter, on 29 August 2019, plaintiffs filed suit against defendants in Jackson County Superior Court, asserting claims for (1) constructive fraud, (2) fraudulent transfer, and (3) civil conspiracy.[1] The parties filed cross motions for summary judgment and other affirmative relief in January 2020. Plaintiffs also moved to strike certain exhibits attached to defendants' motion for summary judgment on the grounds that said papers proffered inadmissible parol evidence.

Following a hearing on the foregoing motions on 7 February 2020, the court denied plaintiffs' motions to strike and for summary judgment and granted defendants' motion for summary judgment on the remaining claims of civil conspiracy and fraudulent transfer. The Order was entered on 11 February 2020. On 21 February 2020, plaintiffs appealed.

II. Discussion

On appeal, plaintiffs contend the trial court erred in two respects: (1) granting summary judgment in favor of defendants; and (2) denying plaintiffs' motion to strike

[1] Defendants filed a motion to dismiss the first and third causes of action on 29 October 2019 resulting in the dismissal only of the first cause of action for constructive fraud; this ruling is not challenged on appeal.

attachments to defendants' motion for summary judgment on the grounds that said documents were inadmissible because they allegedly contained parol evidence. We will address each contention in turn.

1. Summary Judgment

Plaintiffs contend that the trial court erred by granting summary judgment in favor of defendants on their remaining claims of fraudulent transfer and civil conspiracy. However, plaintiffs' brief fails to address the dismissal of the latter claim. Pursuant to Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, "[i]ssues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned." N.C.R. App. P. 28(b)(6) (2020). Therefore, the order granting summary judgment on plaintiffs' civil conspiracy claim is affirmed, and we will address only their claim alleging fraudulent transfer. *See Goodson v. P.H. Glatfelter Co.*, 171 N.C. App. 596, 606, 615 S.E.2d 350, 358 (2005) ("It is not the duty of this Court to supplement an appellant's brief with legal authority or arguments not contained therein.").

"Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' " *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 523-24, 649 S.E.2d 382, 385 (2007)); N.C. R. Civ. P. 56(c)

(2019). "The moving party has the burden of clearly establishing the lack of any triable issue of fact[.]" *Town of W. Jefferson v. Edwards*, 74 N.C. App. 377, 378, 329 S.E.2d 407, 409 (1985) (citing *Moore v. Fieldcrest Mills, Inc.*, 296 N.C. 467, 251 S.E.2d 419 (1979)). "However, if the movant fails in this showing, summary judgment is not proper regardless of whether the non-movant has responded." *Taylor v. Brittain*, 76 N.C. App. 574, 581, 334 S.E.2d 242, 247 (1985) (citing *Bernick v. Jurden*, 306 N.C. 435, 293 S.E.2d 405 (1982), *aff'd as modified*, 317 N.C. 146, 343 S.E.2d 536 (1986)).

Plaintiffs assert that Mr. Woodman's conveyance of Lot 7 on 29 July 2016 violated the Uniform Voidable Transactions Act ("UVTA") codified in N.C. Gen. Stat. § 39-23.1 *et seq*. The UVTA provides two separate provisions upon which a creditor may rely to void a transfer. *See* N.C. Gen. Stat. §§ 39-23.4(a), 39-23.5 (2019); *see also Aman v. Waller*, 165 N.C. 224, 227, 81 S.E. 162, 164 (1914). N.C. Gen. Stat § 39-23.4(a), in pertinent part, provides the following:

> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) With intent to hinder, delay, or defraud any creditor of the debtor; or
>
> (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> a. Was engaged or was about to engage in a

> business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

N.C. Gen. Stat. § 39-23.4(b) sets out a non-exhaustive list of factors to be considered in determining fraudulent intent under N.C. Gen. Stat. § 39-23.4(a)(1), including whether the transfer was to an insider; the "debtor retained possession or control of the property transferred"; the debtor was "sued or threatened with suit" before the transfer; the "transfer was of substantially all the debtor's assets"; the "value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred"; the "debtor was insolvent or became insolvent shortly after the transfer"; the "transfer occurred shortly before or shortly after a substantial debt was incurred"; and whether the debtor made the transfer without receiving "reasonably equivalent value in exchange[.]". *See* N.C. Gen. Stat. § 39-23.4(b)(1)-(13). Notably, though, as " '[i]ntent is an operation of the mind, it should be proven and found as a fact, and is rarely to be inferred as a matter of law.' " *Estate of Hurst ex rel. Cherry v. Jones*, 230 N.C. App. 162, 170, 750 S.E.2d 14, 20 (2013) (quoting *Danville Lumber & Mfg. Co. v. Gallivan Bldg. Co.*, 177 N.C. 103, 107, 97 S.E. 718, 720 (1919)).

The UVTA also affords recovery under N.C. Gen. Stat. § 39-23.5, which states in relevant portion the following:

> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
>
> (b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

N.C. Gen. Stat. § 39-23.5(a)-(b). In order to show that the transfer of Lot 7 was fraudulent under N.C. Gen. Stat. § 39-23.5, plaintiffs must demonstrate that (1) their claim arose before the transfer was made, (2) defendants made the transfer without receiving a reasonably equivalent value in exchange, and (3) defendants (particularly Mr. Woodman) were insolvent at the time or became insolvent as a result of the transfer. *Estate of Hurst ex rel. Cherry*, 230 N.C. App. at 171, 750 S.E.2d at 21 (citations omitted).

In this case, it is undisputed that within seven days of the date plaintiffs sued Mr. Woodman in Florida he transferred property solely titled to himself to he and his wife as tenants by the entirety and that the transfer deed contained no tax stamps

indicating payment or consideration for the transfer. Plaintiffs allege in their verified complaint and in their motion for summary judgment that this transfer was for substantially all of Mr. Woodman's assets and that he was (or at least became) insolvent as a result of this transfer. Relying upon certain documents attached to their own motion for summary judgment—the admissibility of which is questionable at best—defendants retort that the deed initially transferring Lot 7 to Mr. Woodman contained a scrivener's error and should have been titled to both defendants as tenants by the entirety. Defendants, to be sure, attached various e-mails and bank records to their motion for summary judgment, none of which were or are authenticated by any of the third-parties that are alleged parties to the e-mails (persons and financial institutions) nor were the alleged checks or other bank records authenticated. While defendants may be able to establish that the initial transfer was consummated with a scrivener's error, the aforesaid unauthenticated documents—which are based purely on defendants' word—are insufficient to do so as a matter of law. *See*, *e.g.*, *Rankin v. Food Lion*, 210 N.C. App. 213, 218-19, 706 S.E.2d 310, 314 (2011) (holding that because moving party failed to authenticate documents attached to motion for summary judgment, the "trial court was not authorized to consider either document in evaluating the validity of Defendants' request for summary judgment"); *Shook Builders Supply Co. v. E. Assocs., Inc.*, 24 N.C. App. 533, 537, 211 S.E.2d 472, 475 (1975) (holding that where motion for summary judgment

is supported by affidavit—and the affiant is an interested witness—the credibility of the affiant is a jury question).

Furthermore, the parties dispute whether Mr. Woodman transferred Lot 7 via the Warranty Deed with the "intent to hinder, delay, or defraud" plaintiffs and whether Ms. Woodman participated in the same. The parties also dispute whether defendants (specifically Mr. Woodman) transferred Lot 7 without receiving "reasonably equivalent value" in exchange. Indeed, the parties virtually dispute all of the factors set out in N.C. Gen. Stat. § 39-23.4(b).

In any event, the facts set forth above are sufficient to create a genuine issue of material fact with respect to plaintiffs' fraudulent transfer claim. *See Nytco Leasing, Inc. v. Se. Motels, Inc.*, 40 N.C. App. 120, 129, 252 S.E.2d 826, 832 (1979) (holding, *inter alia*, that plaintiff presented sufficient evidence from which jury could conclude that defendant did not retain sufficient properties to pay debts existing at time of the transfer and that grantee, defendant's wife, did not pay a "reasonably fair price for the properties" transferred); *see also Taylor*, 76 N.C. App. at 581, 334 S.E.2d at 246-47 (finding triable issue of material fact in case involving reformation of deed), *aff'd as modified*, 317 N.C. 146, 343 S.E.2d 536 (1986); *Wolfe v. Villines*, 169 N.C. App. 483, 489, 610 S.E.2d 754, 760 (2005) (holding that trial court erred in granting summary judgment where a genuine issue of material fact existed as to the intention of the parties). As such, summary judgment should not have been granted in favor

of either party, and we remand this matter to the trial court for a determination by a jury on the merits, specifically whether Lot 7 was transferred with the intent to defraud plaintiffs; Mr. Woodman transferred Lot 7 to himself and his wife without receiving "reasonably equivalent value" in exchange; Mr. Woodman was insolvent at the time of the transfer or became insolvent as a result of the transfer of Lot 7; Ms. Woodman had reasonable cause to believe that her husband was insolvent or would become insolvent as a result of the transfer of Lot 7; Ms. Woodman, as grantee of Lot 7, knew of and participated in her husband's alleged intent to defraud plaintiffs; and any other issue material to plaintiffs' claims under the UVTA. *See Dellinger Septic Tank Co. v. Sherrill*, 94 N.C. App. 105, 110, 379 S.E.2d 688, 690-91 (1989) ("Questions of fraudulent intent ordinarily go to the jury on circumstantial evidence.") (citations omitted); *see also Nytco Leasing, Inc.*, 40 N.C. App. at 130, 252 S.E.2d at 833 (finding sufficient evidence of fraudulent intent for jury consideration and noting that "when property is sold to a family member for less than its reasonable value and the grantor is unable to pay his debts, the close family relationship is strong evidence of fraudulent intent.") (citation omitted)). Therefore, summary judgment was improper with respect to plaintiffs' claim under the UVTA and is hereby reversed.

2. Motion to Strike

Plaintiffs also argue on appeal that the trial court erred in denying their motion to strike documents allegedly containing parol evidence proffered by

defendants in conjunction with defendants' motion for summary judgment. This issue is moot given our holding that summary judgment was improperly granted. *See generally City of Charlotte v. Univ. Fin. Properties, LLC*, 246 N.C. App. 396, 399 n.1, 784 S.E.2d 587, 590 n.1 (2016).

III. Conclusion

The judgment of the trial court is reversed and remanded with respect to plaintiffs' fraudulent transfer claim and affirmed on the claim of civil conspiracy.

REVERSED AND REMANDED IN PART; AFFIRMED IN PART.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e).