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Equity

4/20/2012

“SUEM” as applied to F. Gregorie & Sons v. Hamlin

273 S.C. 412, 257 S.E.2d 699 (1979)

I. Introduction

Professor Stephen Spitz and the Honorable Roger Young have developed an equitable principle not yet written into law, but testing to be true in many cases. Entitled “SUEM” for Spitz’s Ultimate Equitable Maxim, the name represents that “in equity, good guys should win and bad guys should lose”. (55 S.C.L.Rev. 175 (2003)). However in the case of F. Gregorie & Sons v. Hamlin, we have found how the facts are derived and presented to the court could potentially change the outcome under SUEM; but more importantly that SUEM as applied to this particular case as it was decided, did in fact, achieve a result that was both equitable and fair.

II. The Facts

F. Gregorie and Son brought an action to have a deed, absolute on its face, declared an equitable mortgage. The Honorable Judge Paul Moore of Charleston County Circuit granted a Motion for Summary Judgment in favor of the plaintiffs. The case was then appealed to the South Carolina Supreme Court.

On appeal, the court adopted the circuit court's order as its own. The order held that the conveyance and re-purchase agreement were intended as a security for a debt rather than as a sale. The decision was based on conclusions that the debtor continued to be indebted to the deed holder after the conveyance, there was an agreement to re-convey that set out the parties intentions, there were no prior discussions as to a sale and no price was ever discussed, the consideration for the conveyance was grossly inadequate, the dealings for the parties were as creditor and debtor, the debtor carried his burden of proof, and the defense of laches did not apply since action was instituted in same in year in which vendee/creditor claimed ownership. The Court ordered that the case be referred to the Master in Equity for Charleston County, the Honorable Louis E. Condon, to take an accounting and report to the South Carolina Supreme Court the amount due to the Defendant, Hamlin by the Plaintiff, Gregorie. 273 S.C. 412; 257 S.E.2d 699; 1979 S.C. LEXES 458.

The facts of the case are as follows; The Gregorie family started a small grocery business in the 1940's called F. Gregorie and Son that grew in the 1950's into a fuel oil business. The business incurred a substantial debt of \$100,000.00 in the 1960's, which a large portion was owed to the defendant Hamlin. Certain business creditors were calling their debts from Gregorie including Carolina Fleets and Arkansas Fuel Oil Corporation. Because of these debts Mr. Gregorie executed a mortgage on his land, Oakland Plantation, for a six-month period on April 29, 1960 to secure the fuel debt and continue business operations. At the time of the mortgage the Gregorie family already owed Hamlin

a sum of \$58,732.00 from money advanced in years prior. (Real Estate Transactions Case and Materials p.398).

Hamlin borrowed from First National Bank \$15,000.00 on 10/28/1960 putting up four life insurance policies as collateral to pay off the debt Gregorie owed Carolina Fleets combined with \$801.97 in cash advance by Hamlin. Hamlin also signed as guarantor, a note for \$35,000.00 from First National Bank as well as a personal cash advance of \$4,791.68 to pay off the debt to Arkansas Fuel and discharge the mortgage on Oakland. In October of 1960, Hamlin loaned an additional \$2,400.00 to Gregorie. Hamlin through a bank account at SC National Bank loaned a total of \$35,683.65 to Gregorie to finance business purchases and operations from 10/13/1960 through 8/26/1967. (Id. at 399).

On 1/31/1960 Hamlin assumed the mortgage on Oakland and the \$35,000.00 debt to First National Bank. This agreement by Hamlin and the Gregorie's led to the delivery of the deed to Oakland to Hamlin by Mr. Gregorie, Sr. (Id. at 400).

III. DISCUSSION OF SUEM AS APPLIED TO THE FACTS

No rule works all the time, but when the prerequisites of SUEM are met, and when at least one equitable maxim fits the facts of a particular case, SUEM often predicts the outcome of a case in equity. (55 S.C.L.Rev.175 (2003)). Here we have a case in equity in which many maxims certainly do apply. However, it is debatable whether we have a clear "good guy" and "bad guy" as far as SUEM is concerned. The ultimate equitable maxim can apply even in

situations in which it really is difficult to know if a “good guy” does exist. 55 S.C. L. Rev. 175, 188. As the Honorable Justice Joseph Story discusses in his *Commentaries on Equity Jurisprudence as Administered in England and America*, equity is used in “correcting, mitigating, or interpreting law.” (Lowell, Reibold, Reibold, South Carolina Equity: A Practitioners Guide; 2010, p.3). SUEM posits that it is clear when equitable jurisdiction is present and that when one of the nine equitable maxims is properly applied; a just result will be achieved.

55 S.C. L. Rev. 175, 188-189.

The case of *F. Gregorie & Sons v. Hamlin* makes quite clear that results under SUEM can (and likely will) vary depending on how the facts of the case are presented. In its opinion, the South Carolina Supreme Court majority relied exactly on the facts as adopted from the Common Pleas Court’s summary judgment opinion. This was contrary to the dissent issued by Justice Ness who argued that genuine issues of material fact existed. However, when the case was ordered to the Master in Equity of Charleston County for an equitable accounting, Judge Condon heard much more testimony than Judge Moore of the Common Pleas Court. Through no fault of his own, rule 44 of the SCRCP placed upon Judge Moore, circuit judge, the duty of determining the unquestioned facts before the Court based upon affidavits and instruments under very strict limitations. Under these limitations Judge Moore only considered the deed, the memorandum of agreement attached to the complaint, the pleadings, and a couple of affidavits (by the attorneys who drafted the instruments) in order to determine the intention of the parties at the time of the transaction. Judge

Condon on the other-hand, had the opportunity to hear six days of live testimony and to receive additional exhibits of evidence that led to the development of a set of facts much more detailed and substantial than those adopted by the Supreme Court.

The additional testimony and exhibits of evidence heard and seen by Judge Condon revealed in pertinent part but not limited to: (1) both the Gregorie family and their attorney testified at one point in late 1960, the Gregorie family was willing to sell portions of the Oakland Plantation property in order to satisfy the debts owed to creditors; (2) Mr. Hamlin was acting in good faith for requesting a deed instead of a mortgage; (3) Mr. Walker Coleman (a First National Bank loan officer) testified to the fact that discussions were held between the Gregorie family, Mr. Hamlin, and himself as to the transfer of title of Oakland Plantation to Mr. Hamlin; (4) Mr. Hamlin was never advised by the attorney drawing up the deed that he only held a security interest in Oakland Plantation; (5) Mr. F. Gregorie testified that he understood that the delivery of the deed to Mr. Hamlin meant a transfer of title outside of his family; (6) The lawyer handling the transaction recorded the deed at Mr. Hamlin's request and represented Mr. Hamlin in the sale of a 34 acre parcel of Oakland Plantation to a third party from which Mr. Hamlin received payment; (7) Mr. Hamlin had a vivid memory of the events in dispute, whereas the Gregorie family and attorney testified as to their poor memory or recollection of the events in dispute; (8) Though the Supreme Court was under the impression that the high and low end values of Oakland was approximately \$601,170.00 and \$300,585.00 respectively,

testimony was received from First National Bank that their appraisal of Oakland during the negotiations leading up to the 1961 transaction in dispute derived a value of \$138,800.00; (9) the actual consideration given by Mr. Hamlin for the deed far exceeds the consideration stated in the deed due to the amount of additional funds given by Mr. Hamlin to the Gregorie family over many years; and (10) testimony revealed had it not been for Mr. Hamlin's loans the Gregorie family would have lost the family business and would have likely had to sell Oakland Plantation in 1961 in order to satisfy debts. (Spitz, Virzi. Real Estate Transactions Case and Materials. 2010, p. 398-405). To follow Justice Ness's dissent in the majority opinion, the additional testimony and exhibits most certainly give rise to genuine issues of material fact that would (in our humble opinion) be grounds for the denial of the F. Gregorie summary judgment motion.

Judge Condon was bound by the South Carolina Supreme Court's decision that the 1961 deed for Oakland Plantation granted by F. Gregorie Sr. to Mr. Hamlin be declared an equitable mortgage and the equitable defense of laches raised by Mr. Hamlin did not apply. As it stood in the Supreme Court's opinion, SUEM would not have surfaced nor would have Mr. Gregorie be labeled as the "good guy" and Mr. Hamlin as the "bad guy". This would have been absolutely correct based on the Common Pleas Court's facts but quite contrary to the actual facts of the case.

The equitable maxim "Equity Regards Substance and Intent Rather than Form" can absolutely be applied to complicated fact situation in F. Gregorie & Sons v. Hamlin. SUEM provides the alternate position that could have been

reached had the Supreme Court and Common Pleas Court looked at the full facts as presented before the Master in Equity. The Court of Common Pleas Judge only took into account the deposition of Hamlin, an affidavit by Mr. Hamlin, and an affidavit by the attorney who prepared the documents in dispute. (Real Estate Transactions Case and Materials. 2010, p. 383). Following this maxim, the court looked to the intent of the parties and the substance of their prior dealings, (which included many loans over time) and came to the conclusion that a mortgage was the intended transaction though a deed was presented and there was no language evident of a mortgage. Had Judge Moore considered the SUEM principle, he may well have considered that while there was no distinct “good guy” in this case, that more facts needed to be heard and a different result may have been reached.

The maxim "equity regards as done, that which ought to be done" deals with fairness and good conscience. 55 S.C. L. Rev. 175, 184. When this maxim and SUEM are applied to the facts of *F. Gregorie & Sons v. Hamlin* it becomes clear that many determinative facts and testimony were left out of the record by the Court of Common Pleas. If either the South Carolina Supreme Court or the lower court had applied SUEM, there may have been a different result when all of the facts were heard in their entirety. Specifically, the testimony revealing that Gregorie had discussed selling Oakland Plantation and that Hamlin had done substantial work managing the property for years. Had SUEM been applied by either court in this case, there may well have been a result likely granting Mr. Hamlin a deed in Oakland Plantation for all of his efforts and good faith. At the

very least however, SUEM would have directed the court to follow the conclusion in Justice Ness's dissent that a genuine issue of material fact exists and the case should be remanded for further taking of testimony. *F. Gregorie & Son v. Hamlin*, 273 S.C. 412, 434 (S.C. 1979).

As early as the Constitution of 1790, South Carolina established "courts of law and equity". After the ratification of the Constitution of the United States in 1791, the South Carolina General Assembly established a "circuit court of equity... at Charleston for the districts of the low country; at Columbia for the...middle country; and at Cambridge for the equity districts of Ninety-Six." (Lowell, Reibold, Reibold. South Carolina Equity: A Practitioners Guide. 2010, p. 8). Since that time courts of equity have often been the arena where disputes are decided where the parties do not have an adequate remedy at law.

In the case at hand, the Supreme Court affirmed the lower court decision that a mortgage had been created based on the facts it had to consider. In applying SUEM to the South Carolina Supreme Court's ruling, the ultimate equitable maxim once again proves to find the most fair and equitable result for the parties involved. The choice to send the case to the Master in Equity in Charleston for an equitable accounting is one the Supreme Court has made before. In 1896 there was another case where the plaintiff/debtor owed various sums of money to the defendant (who represented the estate of the person involved in the transactions in question) and a deed had been executed, on property at 29 Broad St. in Charleston, as part of the payment of the debts owed; and plaintiff declared the deed to be in actuality an equitable mortgage. This

case, Devereux v. McCrady is a great example of similar complicated facts in which the Supreme of South Carolina decided that “the court deems it best not to pass upon any other question in the case than that the complexity of the accounts is such that the plaintiff cannot have adequate relief at law.” Devereux v. McCrady, 46 S.C. 133, 148 (S.C. 1896). In Devereux, the Supreme Court quoting Justice Story’s Commentary on Equity Jurisprudence wrote:

“the inability of courts of law, in some instances, to give perfect relief; which occurs in all cases when a simple judgment for the plaintiff or for the defendant does not meet the full merits and exigencies of the case, a variety of adjustments, limitations, and cross-claims are to be introduced and finally acted on, and a decree, meeting all the circumstances of the particular case between the very parties, is indispensable to complete distributive justice.” (Ibid. 147).

The Supreme Court goes on to say that the proper case for equity is one where the account has become so complicated that a court of law would not be competent to make a ruling. (Ibid. 148). The court in the Devereaux ruled “in this case the complexity of the account is such that the plaintiff cannot have adequate relief at law, but has the right to invoke the jurisdiction of the Court of Equity.” Devereux v. McCrady, 46 S.C. 133 (S.C. 1896). In applying SUEM to the Devereaux case, it is easy to see that because the facts before the Supreme Court were confusing and that there was a possibility of missing facts, the court of equity is the only place where a just result could be found. In concurrence is the case of F. Gregorie & Sons v. Hamlin. The Supreme Court, given the limited

facts it had, probably made the right choice in referring the case to the Master in Equity for accounting. And in doing so, the Supreme Court made a decision that seems to comport with the principles of SUEM.

SUEM, although not in full effect, is entirely consistent with the results Judge Condon reached in determining factors of the equitable accounting. Although Mr. Hamlin did not obtain title to Oakland Plantation, Judge Condon did restore Mr. Hamlin as close to the status quo as he felt reasonably possible. The honorable judge recognized that the present value of the plantation was \$1,375,000.00 (an increase of \$1,236,200.00 over the value of the plantation at the time of the mortgage in question) was due, at least in part, by Mr. Hamlin's considerable efforts and management of the property. (Id. at 410.). As a result, Mr. Hamlin was awarded the full amount of the money loaned, the majority of the funds awarded and expended for defending condemnation actions against Oakland Plantation, funds for appealing tax assessments, the principal amounts paid by Mr. Hamlin on Oakland Plantation's property taxes, and a 6% per annum simple interest on all principal amounts awarded. Furthermore, the Master held that the Gregorie family's argument for an abatement (\$81,000) of the interest due to Mr. Hamlin lacked evidentiary proof and denied the abatement. Lastly, due to the Gregories' complete abandonment of ownership responsibilities and Mr. Hamlin's good faith time and efforts, Mr. Hamlin was awarded 10% of the increase in value of Oakland Plantation (\$123,620.00). (Id. at 410).

Here, the maxim "equity regards as done that, which ought to be done" applies because Judge Condon realized the position Hamlin had been put in by

not being able to get the deed to the plantation. Following this maxim and applying SUEM to the actual result of the Supreme Court's decision to refer the case to the Master in Equity, a complicated fact situation is solved in a fair and equitable manner using equitable accounting.

V. CONCLUSION

"SUEM", or Spitz's Ultimate Equitable Maxim, represents that "in equity, good guys should win and bad guys should lose" and also in some cases that equitable jurisdiction is present, and even if there is no clear "good guy" a result that is both fair and equitable can be achieved. (55 S.C.L.Rev. 175 (2003)).

Using the equitable maxim of "Equity Regards Substance and Intent Rather than Form" the court could have easily found under SUEM that there was a need to hear more facts and that the intent of the parties might have been different than the evidence presented which deemed the transaction to be an equitable mortgage. Furthermore, using the maxim "equity regards as done that, which ought to be done", even if the Master in Equity is bound by the Supreme Court's decision to create an equitable mortgage out of an intended deed, the implementation of an equitable accounting provides a way for SUEM to prevail.

Although the amount of facts reviewed by a court could (and likely will) change the outcome under SUEM, as applied to this particular case, SUEM allowed a way for the Master in Equity to "double check his math" quite literally and achieve a result that was both equitable and fair. Thus, Hamlin is made financially whole, and the Gregorie family keeps their land.