

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

DENISE JOHNSON,

Plaintiff,

v.

Civil Action No.: 19-C-178

Judge: Christopher D. Chiles

RUTH ANN PINSON,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
DISMISSING COMPLAINT OF PLAINTIFF**

On this day, the above-styled matter came on before the Court relative to the Motion of the Defendant to Dismiss or, in the alternative, for Summary Judgment. Also pending before the Court is the Motion of the Plaintiff to join Mark B. Pinson, spouse of the Defendant, Ruth Ann Pinson, as an additional defendant. The latter Motion will be dealt with by separate Order of this Court.

FACTS

This proceeding is brought by Plaintiff Denise Johnson. She alleges that she is the assignee of a judgment creditor of Mark B. Pinson—who is not to date a party in this case—and she seeks to cancel a real estate conveyance. Specifically, she targets a transaction in which Cabell County, West Virginia residential real estate was conveyed in 2015, by Mark B. Pinson, to his wife, the Defendant, Ruth Ann Pinson.

In short, the chronology of the essential elements of this case are as follows: Mark B. Pinson acquired real estate located at 101 Ridgewood Road in Huntington, West Virginia, on or about October 4, 1993. Thereafter, Mr. Pinson married the Defendant, Ruth Ann Pinson, in January, 2015. Some three months later, on April 22, 2015, he conveyed his real estate at 101 Ridgewood Road to his wife, Ruth Ann Pinson, by a deed recorded on April 23, 2015, in the offices

of the Clerk of the County Commission of Cabell County, West Virginia, in Deed Book 1327, at Page 57.

Some sixteen months later, in litigation pending before the Circuit Court for the City of Richmond, Virginia, a Confession of Judgment was entered so as to, apparently, resolve litigation between two business entities referred to as James River Coal Sales, Inc. and Producers Coal, Inc. That Confession of Judgment was entered on August 8, 2016. As shown by the court records from that forum, the litigation between the companies concluded with a confessed judgment. Any and all references to “parties” in the Virginia case documents were to the two business entities, only. In the Confession of Judgment, Producers Coal, Inc., confessed judgment unto James River Coal Sales, Inc., in the sum of \$1,937,377.00. A separate Promissory Note was executed and apparently made part of the court’s record wherein Producers Coal, Inc., as the stated “obligor” promised to pay \$2,249,438.90, to James River Coal Sales, Inc. Mark B. Pinson signed solely in behalf of the obligated defendant and debtor party, Producers Coal, Inc. There is no evidence from the Virginia court record that Mark B. Pinson was ever personally a party in the Virginia suit or that he was ever a party to the confessed judgment debt. It is true that a separate document has been produced in this case evidencing a “guaranty” of the promissory note debt by Mark B. Pinson, dated on or about November 25, 2014. However, there has been no evidence brought by any party in this proceeding to indicate that Mark B. Pinson was ever sued on that guaranty or found liable on it. To be sure, the only judicial debt consisted exclusively of a judgment debt against Producers Coal, Inc.

Following the entry of the confessed judgment, on or about March 29, 2017, James River Coal Sales, Inc. sold or otherwise assigned its judgment debt against Producers Coal, Inc. to

Plaintiff, Denise Johnson.¹ Plaintiff Denise Johnson, in turn, filed a separate action to “register” the foreign Virginia judgment before the Circuit Court of Cabell County, West Virginia, on May 5, 2017, in a proceeding designated by the Clerk of this Court as Civil Action Number 17-C-287.

In the paperwork submitted in behalf of Denise Johnson in the 2017 proceeding to “register” the judgment, the judgment was referred to as being one against Producers Coal, Inc. and against Mark B. Pinson as a “obligor”. No extraneous evidence was provided to document or demonstrate that the Virginia Court had, in fact, ever regarded or denominated Mark B. Pinson as a judgment debtor. In addition, counsel for Ms. Johnson caused an Abstract of Judgment to be issued, and recorded with the Clerk of the County Commission of Cabell County, West Virginia, as a lien against any real estate owned by Producers Coal, Inc., and Mark B. Pinson. It was placed of record in Lien Book 155, at Pages 48 and 49. And, though coming two years after she obtained the real estate from her husband, Ruth Ann Pinson was not made a defendant by Ms. Johnson in the 2017 civil action to “register” the Virginia judgment.

The instant civil action was filed on April 18, 2019. Ruth Ann Pinson was served on April 25, 2019. A Memorandum/Notice of Lis Pendens was recorded in the offices of the Clerk of the County Commission of Cabell County, West Virginia, on April 18, 2019, in Lis Pendens Book 6, at Page 693. The Memorandum/Notice of Lis Pendens referenced this civil action as a pending proceeding which could affect title to Mrs. Pinson’s residential real estate on Ridgewood Road.²

In this proceeding, the Plaintiff Denise Johnson contends that her Virginia judgment is a judgment against Mark B. Pinson and that Mark B. Pinson is guilty of fraudulently transferring title to the real estate at 101 Ridgewood Road to his wife, the Defendant Ruth Ann Pinson, in

¹ This has been the allegation of the Plaintiff. No documentation of that assignment has been produced; however, the representation is accepted as true, coming from the non-moving party to these summary judgment proceedings.

² Consequently, since May, 2017, the Plaintiff has been recording documents evidencing, or at least suggesting, non-existent liens against Mark B. Pinson, and the title to his former real estate.

April, 2015. It seeks to set aside such transfer, ostensibly so that the real estate can become a source of collection on her judgment.

The Defendant Ruth Ann Pinson countered this civil action with a Motion to Dismiss, or in the alternative, a Motion for Summary Judgment, claiming that the Virginia judgment was a judgment exclusively against Producers Coal, Inc., and that it was not directed against Mark B. Pinson. She therefore asks that the Complaint be dismissed.

In the Defendant's Motion and in argument before this Court, the additional issue was presented as to whether or not Mark B. Pinson was or was not an indispensable party. As an apparent response thereto, the Plaintiff has brought a Motion before this Court seeking to add Mark B. Pinson as an additional defendant. That Motion was first brought to the Court on August 5, 2019. The Defendant has opposed that Motion, as has Mark B. Pinson in a special appearance before this Court.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes as follows:

1. The Defendant initially responded to the Complaint of the Plaintiff with a Motion to Dismiss, i.e. for judgment on the pleadings. Since matters and evidence outside the pleadings have been presented, considered, and not excluded, the Motion of the Defendant will be treated as one for summary judgment under Rule 56 of the West Virginia Rules of Civil Procedure. See WVRCP 12(c).
2. Upon motion for summary judgment, all exhibits, affidavits, and other matters submitted by both parties should be considered by the court. See Haga v. King Coal Chevrolet Co., 151 W.Va. 125, 150 S.E.2d 599 (1966), WVRCP 56(c).

3. The court must grant the non-moving party the benefit of inferences, as to credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts. See Cavendar v. Fouty, 195 W.Va. 94, 464 S.E.2d 736 (1995).

4. However, affording all such mandatory considerations to the Plaintiff as the non-moving party, all of the evidence produced demonstrates that the Virginia confessed judgment was exclusively one against Producers Coal, Inc., with Mark B. Pinson merely signing documents in the corporation's behalf as its officer. The only references in the Virginia court judgment to the word "obligor" are to Producers Coal, Inc., and not to Mark B. Pinson in his individual capacity.

5. Accepting the representations of the Plaintiff as the non-moving party, the Plaintiff acquired the judgment obtained and owned by James River Coal Sales, Inc., on or about March 29, 2017. However, while Plaintiff Denise Johnson may acquire a judgment, she has the judgment as rendered, and nothing beyond. See N.L.R.B. v. Heck's Inc., 388 Fd.2d 668, 670 (4th Cir. 1967) and Costal Tank Lines, Inc. v. Hutchinson, 144 W.Va. 715, 721, 110 S.E.2d 735, 739 (1959).

6. The parties have had ample opportunity to obtain all relevant records regarding the Virginia judgment. There have been no motions to continue in order to obtain affidavits or deposition testimony. WVRCP 56(f).³

7. The only step additionally taken, after argument on the Defendant's Motion, by the Plaintiff, to counter the motion of the Defendant, was her Motion to Amend her complaint in order to add Mark B. Pinson as an additional defendant. In her proposed amended pleading, Ms. Johnson asserts no additional theory of recovery or any additional facts or evidence in her favor. For reasons set forth in the separate order to this Court addressing that motion, the requested

³ See the four-part test for obtaining a Rule 56(f) continuance per Harrison v. Davis, 197 W.Va. 651, 478 S.E.2d 104 (1996). Plaintiff would be hard-pressed to make a successful showing under any of the prescribed test elements. In any case, the Plaintiff has not even attempted to do so.

amendment does not alter the status of the parties and the pleadings. Mark B. Pinson was not a judgment debtor on the subject debt. In addition, the effort to join him came beyond the period of limitations set forth in § 40-1A-9 of the UFTA; and the Plaintiff has consistently pleaded that she seeks recovery under the UFTA.⁴

8. The documents filed earlier in behalf of the Plaintiff to “register” the Virginia judgment in this Court’s Civil Action No. CK-6-2017-C-287, in so far as they set forth that the same is a judgment against Mark B. Pinson, are false, null and void, and of no effect.

9. There being no judgment against Mark B. Pinson, there is no legal support, within this civil action, upon which to support Plaintiff’s cause of action, as pleaded, under the UFTA against Defendant Ruth Ann Pinson and her said real estate.

10. Accordingly, the evidence produced demonstrates that Defendant Ruth Ann Pinson is entitled to Summary Judgment as a matter of law.

11. The conclusions of this case being in favor of Defendant Ruth Ann Pinson, the 2019 Notice (Memorandum) of Lis Pendens filing should be released or otherwise may be addressed by the filing of this Order with the office of the subject County Clerk in order to relieve Defendant of it as a cloud, in and of itself, upon the title to her real estate.

Based upon the foregoing findings of fact and conclusions of law, the Court does hereby ADJUDGE, ORDER and RULE as follows:

1. Defendant’s Motion for Summary Judgment is granted, dismissing the Complaint of the Plaintiff.

⁴ Plaintiff sought to amend her complaint to add a party under WVRCP 15(c)(3), seeking, among other goals, to relate Mark B. Pinson’s joinder back to when this civil action was first filed. However, a mandatory criteria to be able to do so, is to show that the party sought, was omitted due to a “mistake”. Mark B. Pinson has been at the center of Plaintiff’s claims and cannot be said to have been omitted by mistake.

2. Defendant is hereby awarded her costs, if any in this proceeding, and a statutory attorney fee.

3. Defendant is hereby given leave to record a certified copy of this Order in the office of the Clerk of the County Commission of Cabell County, West Virginia, with cross-referencing to the subject Abstract of Judgment, issued by the Clerk of this Court in Civil Action CK-6-2017-C-287 and recorded in the office of the said County Clerk in Lien Book 155, at Pages 48 and 49; and to the Memorandum/Notice of Lis Pendens recorded in behalf of Plaintiff, following the filing of this civil action, in the office of the said County Clerk, in Lis Pendens Book 6, at Page 693.

4. This civil action is hereby struck from the active docket of this Court.

ORDER

ENTER: /s/ CHRISTOPHER D. CHILES

Judge

Prepared and Presented by:



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STATE OF WEST VIRGINIA
COUNTY OF CABELL

I, JEFFREY E. HOOD, CLERK OF THE CIRCUIT
COURT FOR THE COUNTY AND STATE AFORESAID
DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON 06/07/2019

GIVEN UNDER MY HAND AND SEAL OF SAID COURT

THIS

 CLERK
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

Approved as to form only by:

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