

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION

95 MAY 31 AM

U. S. DISTRICT C
W. DIST. OF

CONNIE MANSFIELD, Personal)
Representative of the Estate of Harold)
Mansfield, on behalf of herself and the)
Estate,)
)
Plaintiff,)
)
v.)
)
WILLIAM PIERCE,)
)
)
)
Defendant.)

Civil Action No. 2: 95CV62

JUDGMENT AND STAY OF EXECUTION

This action came for trial before the undersigned U. S. District Judge and a jury during the Court's May trial term. The trial commenced on May 13 and ended on May 15, 1996. The Court submitted two issues to the jury, both of which were decided in favor of the plaintiff. The issues were:

1. Were the North Carolina Church of the Creator and the Florida Church of the Creator essentially the same entity?
YES: _____ NO: _____
2. Did the Church of the Creator fraudulently convey the property in question to the Defendant, and was any such fraudulent conveyance a proximate cause of the loss complained of by the Plaintiff?
YES: _____ NO: _____

The jury answered "Yes" to both questions.

Prior to the trial, the parties had stipulated to the following:

For purposes of this action only and only for the purpose of the Court's effectuating a remedy should the plaintiff prevail, the parties stipulate that the defendant's profit on his sale of the Church of the Creator

property was \$85,000. The parties further stipulate that should the plaintiff prevail at trial, the Court should impose a constructive trust for \$85,000 for the plaintiff's benefit on the deed of trust on the Church property under which the defendant and his wife are beneficiaries.

The undisputed evidence at trial revealed that the defendant purchased the Church of the Creator (COTC) property for \$100,000 on July 17, 1992. The evidence further revealed that the defendant sold the property to Mildred Cope on January 12, 1994 for a purchase price of \$200,000. At the closing, Ms. Cope paid \$100,000 in cash and signed a promissory note for \$100,000. The note is secured by a deed of trust.

Although the defendant was the sole buyer of the property under the July 17, 1992 deed from the COTC, both the defendant and his wife, Susan Pierce, signed the January 12, 1994 deed conveying the property to Ms. Cope. Ms. Pierce's name was also included as a payee with the defendant on the promissory note from Ms. Cope and as a beneficiary with the defendant under the deed of trust. Bobby Key, the lawyer who prepared the deeds, testified that Ms. Pierce's name was added to the deed solely to effectuate a waiver of any potential marital interest she may have had in the property. Under North Carolina law, a spouse may dissent from a deceased spouse's will under certain limited circumstances. N.C. Gen. Stat. § 30-1. Instead of taking an intestate share, a dissenting spouse has the option of taking a life estate in one-third of the value of all real property that the deceased spouse owned "at any time during coverture" unless, among other things, the dissenting spouse waived her right by joining in a conveyance of the property or was not required to join in the conveyance. N.C. Gen. Stat. § 29-30.

Upon the jury's verdict in favor of the plaintiff and the parties' stipulation, it is ORDERED AND ADJUDGED that:

1. the defendant was unjustly enriched in the amount of \$85,000 from his purchase and sale of the COTC property;

2. in order for the plaintiff to recover the defendant's unjust enrichment, a constructive trust for \$85,000 is imposed for the plaintiff's benefit on the promissory note from Ms. Cope and on the deed of trust on the COTC property under which the defendant and his wife are beneficiaries; and

3. to effectuate the constructive trust and to provide for a stay of execution pending appeal, it is FURTHER ORDERED that:

a. within 15 days of the entry of this judgment, the defendant shall endorse the promissory note over to the plaintiff and deliver it to the Clerk of Court. If the defendant's wife, Susan Pierce, does not also endorse the promissory note over to the plaintiff, the Court will conduct further proceedings to effectuate its judgment;

b. the Clerk of Court is directed to serve the attached summons and order upon Mildred Cope. The summons and order require Ms. Cope to serve an answer upon the parties' attorneys and the Clerk of Court within 20 days after the summons is served upon her. In her answer, Ms. Cope must show cause, if any, why she should not be required to make future payments under the promissory note to the Clerk of Court, rather than to the defendant. Her answer must also indicate whether any payments are past due and whether she has made any payments in advance of her current monthly schedule. If Ms. Cope cannot show cause why she should not be required to make future payments to the Clerk of Court, she is ordered to deposit with the Clerk of Court any future payments she makes under the note. Payments made by Ms. Cope to the Clerk shall have the same force and effect as payments made to the holders of the note. The Clerk of Court is directed to deposit any payments received from Ms. Cope into an interest-bearing account; and

c. pending any appeal, the Clerk shall retain the promissory note and any payments made by Ms. Cope as security for satisfaction of the judgment. If the

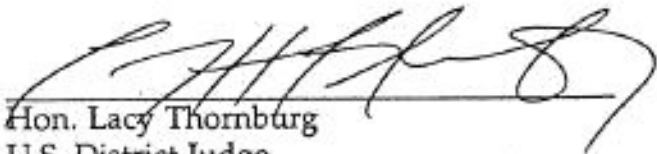
judgment in favor of the plaintiff is upheld, the Clerk shall deliver the note and any payments from Ms. Cope to the plaintiff, and the plaintiff shall pay the defendant the amount by which the principal balance of the promissory note, at the date of the entry of this order, exceeds \$85,000. If the defendant prevails on appeal, the Clerk shall retain the note and payments from Ms. Cope pending further order of the Court;

4. the defendant is ordered to turn over to the Clerk any payments on the note he receives from Ms. Cope after the date of the entry of this order;

5. except as provided by order of the Court, further execution on the judgment is stayed pending appeal; and

6. costs other than attorney's fees shall be taxable to the defendant.

ORDERED AND ADJUDGED this 29th day of May, 1996.



Hon. Lacy Thornburg
U.S. District Judge

United States District Court
for the
Western District of North Carolina
May 31, 1996

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:95-cv-00062

True and correct copies of the attached were mailed by the clerk to the following:

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cc:
Judge ()
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Court Reporter ()
Courtroom Deputy ()
Orig-Security ()
Bankruptcy Clerk's Ofc. ()
Other Judicial Deputy (✓)

Frank G. Johns, Clerk