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AUG 27 1991

CLERK, SUPREME COURT

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IN THE
SUPREME COURT OF FLORIDA

RONALD GUY McINTOSH, et al.,

Petitioners,

vs.

CASE NO.: 78,152

L. H. HOUGH,

Respondent.

REVIEW OF CERTIFIED QUESTION
FROM THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF

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ARGUMENT

As to Hough's first argument he acknowledges that he could not sue Bailey in Duval County and successfully recover the property he conveyed to circumvent the Henry County Judgment. That is because of the equitable rule announced in Miller v. Berry that as between the fraudulent grantor and grantee the conveyance would be good. So Hough devised another way to utilize the court process in an attempt to circumvent the rules of equity and recover back the property he fraudulently gave away to avoid it being executed upon. Whatever effect one gives to the alleged agreement between Hough, his brother and Bailey there is very little, if any, bearing in that arrangement on the issues in this appeal.

The reference to Von Zampf v. Cohen by Hough is not of benefit to his argument. That case is clearly distinguishable from this case and more importantly it appears to be consistent with the Supreme Court opinion of Miller v. Berry. From what one can gather from the opinion it appears that Cohen and Von Zampf conspired to defraud an insurance company and possible claimants against Von Zampf's company. Cohen, Von Zampf's attorney who was reprimanded for his conduct was nonetheless allowed to enforce a stipulation between he and apparently Von Zampf or Von Zampf's company to

recover \$46,500.00 plus interest. The holding of Von Zampf by the Third District Court of Appeal is that the fact that a party (Cohen) has engaged in inequitable conduct as a general matter or with respect to the public or a third person does not affect his legal rights as to another person (Von Zampf) to whom the improper activity was not directed. Essentially, they are saying that between the co-conspirators their acts are valid. This is the same as the holding of Miller v. Berry where it was held that between the fraudulent grantor and the grantee there was a valid conveyance but since there were no creditors affected those creditors could not execute on their preexisting judgments.

McIntosh does not believe that the Third District Court opinion in Von Zampf means that Hough can recover against him and/or his predecessors Miles, T.B.F. and Bailey. Hough's improper activity was clearly directed toward the deed to the property which he conveyed to Louise Bailey.

The holding in Von Zampf is not inconsistent with Appellant McIntosh's position and the opinion does not go so far as to say McIntosh could not prevail.

Hough also contends that Les Miles, McIntosh and Gregory Johnson were not defrauded by the deed from Hough to Bailey. This overlooks the fact that Hough and Bailey fraudulently conspired to put the deed in her name in the

first place. It was Hough who had been sued for misrepresentation and had a judgment entered against him and who stood to loose his property when he got Bailey to agree to let him get a sham divorce and put the property in her name. In his brief Hough states:

"if there was any fraud it was by Bailey when she deeded the property to Les Miles during the Duval County litigation, or by Gregory Johnson who assisted in the transfer of the property, or by Les Miles when he quit claim deeded the property to McIntosh." Answer Brief of L. H. Hough, p. 13.

Are we to assume by this statement that Hough actually contends that he did not commit a fraudulent act and if so can he in good conscious make such an allegation to this court after having admitted his purpose in starting this whole chain of events in the first place?

Taking the position espoused by Hough results in rewards being bestowed on fraudulent activity by limiting the rights of wronged innocent persons to challenge the results of that fraudulent activity.

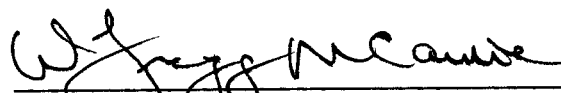
The actions of Hough by making a fraudulent conveyance to prevent him from having to pay a legal obligation should not be rewarded. Just as improper would be a conclusion in these proceedings that the valid equitable defenses against Hough should not be allowed to be raised because of the Lis Pendens or the denial of Les Miles' effort

to intervene in the Duval County litigation. Talk about a person wanting their cake and eating it too. Hough deeds away his property so a legitimate creditor cannot attach it, by conspiring with his wife to obtain a sham divorce. He then has to go an around-about way to circumvent a rule of equity so that he can recover the property back from his conspiring wife. He asks the First District Court of Appeal to review the effectiveness of the Lis Pendens he filed and ignored their opinion. He did not have the trial court act upon the District Court's opinion but wants to take the position that best suits his present needs and claims the Lis Pendens was still effective even though not reinstated by the Duval trial court. Then he opposes Les Miles' effort to intervene in the lawsuit wherein Les Miles would have been a person affected by the transfer between Hough and Bailey and the matter being litigated concerned Hough's misdeed. All of Hough's conduct is inconsistent with the concept of equity. He should not be rewarded.

Respectfully submitted,

MAHON, FARLEY & McCAULIE, P.A.

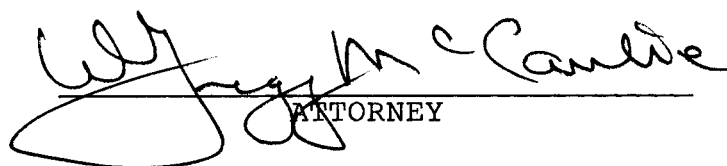
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Reply Brief filed by Ronald Guy McIntosh has been furnished TYRIE A. BOYER, ESQUIRE, 3030 Independent Life Building, Jacksonville, Florida, 32202; ROBERT T. HYDE, JR., ESQUIRE, 1300 Gulf Life Tower, Jacksonville, Florida, 32207; CARL D. DAWSON, ESQUIRE, 320 East Adams Street, Jacksonville, Florida, 32202; LAVINIA K. DIERKING, ESQUIRE, P. O. Box 1873, Orlando, Florida, 32802, and DAVID FEREBEE, ESQUIRE, 4655 Salisbury Road, Suite 390, Jacksonville, Florida, 32256, by mail, this 26th day of August, 1991.


ATTORNEY