

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 443

September Term, 2016

ESTATE OF JOHN L. JONES

v.

JSC CONSULTING, INC., et al.

Meredith,
Friedman,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: April 12, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this case we are asked to determine the validity of a deed (the “Deed”). According to the Deed, Adrienne Jones (“Ms. Jones”), the personal representative of decedent John L. Jones’s estate (the “Estate”), conveyed a 50% interest in real property located at 1120 Shaffersville Road, Mount Airy in Howard County, Maryland (the “Property”) to appellee, JSC Consulting, Inc. (“JSC”). Malcolm B. Kane Esq., appellant, was thereafter appointed successor personal representative of the Estate. Appellant filed suit on October 9, 2014, in the Circuit Court for Howard County seeking to quiet title to the Property, arguing that the Deed was invalid. On March 21, 2016, after numerous filings, including a counterclaim by JSC for breach of contract, the court held a bench trial. On April 26, 2016, the trial court issued its Opinion and Order (the “Opinion”) in which it concluded that: 1) the Deed was valid, and 2) that JSC could not advance its counterclaim for breach of contract. Appellant timely appealed and raises four questions which we have rephrased as: Did the trial court err in finding the Deed valid?¹ Finding no error, we affirm.

FACTS AND PROCEEDINGS

When John L. Jones died on September 3, 2007, his will appointed his daughter Ms. Jones to be both personal representative of his Estate and Trustee of his Property. By 2011, the Property had fallen into disrepair, and property taxes were unpaid. In May of

¹ Appellant’s “Questions Presented” do not match the “Argument” section of his brief. Indeed, appellant’s brief provides numerous other challenges—a paucity of references to Maryland law, incoherent arguments, and rhetorical questions. We have done our best to address the issues appellant appears to present on appeal.

2011, Badger LLC purchased a tax sale certificate on the Property for \$114,019 and thereafter filed suit to foreclose the equity right of redemption.²

While the tax sale was pending, appellee Steve Commander (“Commander”) of JSC approached Ms. Jones, offering to redeem the Property from the tax sale, and then put the Property on the market in exchange for JSC receiving one-half of the Property’s value. The parties do not dispute that JSC is a Delaware corporation that has never registered to do business in Maryland, but do dispute whether JSC was permitted to take a 50% interest in the Property pursuant to the Deed.³ On June 21, 2012, Ms. Jones, acting as personal representative, executed the Deed in which she granted a 50% interest in the Property to JSC and kept the remaining 50% for the Estate. JSC and the Estate were to hold the Property as tenants in common. The Deed stated that the consideration for granting this interest was “No Dollars 00/100 (\$.00).”

On August 10, 2012, Commander and the Estate, through Ms. Jones, entered into a Joint Venture Agreement (“JVA”).⁴ The JVA laid out the terms by which Commander agreed to take the necessary steps to stop the tax foreclosure on the Property—including

² Badger LLC ultimately decided to back out of the tax sale and not foreclose on the right of redemption when it learned that the Property was not worth \$114,019.

³ In his brief, appellant appears to challenge whether JSC was properly incorporated in Delaware when it transacted with Ms. Jones. At trial, however, appellant stipulated that at all relevant times JSC was properly incorporated in Delaware, and instead disputed whether JSC was permitted to do business in Maryland.

⁴ Although Commander signed his own name rather than on behalf of JSC in the JVA, appellant does not dispute that Commander acted on behalf of JSC for purposes of the JVA.

loaning funds to redeem the Property, if necessary. In exchange for these services, the Estate agreed to sell the Property, or not block its sale, and pay Commander 50% of the net equity from the sale.

By August 31, 2012, JSC had found a bona fide third party to purchase the Property, and prepared to proceed to closing. That day, Ms. Jones called Commander and informed him that she would not allow the closing because her children did not agree with the fact that JSC would receive 50% of the proceeds from the sale. Commander contacted Classic Settlements, the company responsible for closing, and learned that Ms. Jones intended to proceed with closing, but was not planning on sharing 50% of the proceeds according to the Deed.

In order to halt the sale, on September 6, 2012, Commander sent a letter to Classic Settlements warning them not to close on the sale of the Property. Classic Settlements did not close the deal, describing the transaction as “a disaster waiting to happen.” Thereafter, JSC filed a claim against the Estate for \$37,500 on September 12, 2012, in the Orphans’ Court for Howard County, presumably for 50% of the sale price it had obtained for the Property. On September 26, 2012, Ms. Jones disallowed the claim.

On October 9, 2014, appellant⁵ filed a complaint in the Circuit Court for Howard County seeking to quiet title to the Property. JSC filed an answer on March 3, 2015,

⁵ The certification by the Register of Wills for Howard County states that appellant was appointed as successor personal representative on June 27, 2013 to take effect on June 27, 2014. Neither party addressed this discrepancy below. We assume that appellant became successor personal representative in 2013.

followed by an amended answer on April 21, 2015, which included counterclaims for declaratory relief to quiet title to the Property, breach of contract, and fraud. On March 21, 2016, the trial court held a bench trial. After hearing testimony and accepting evidence, the court took the matter under advisement and asked the parties to prepare briefs on the issue of whether a non-Maryland corporation not registered in Maryland can hold title to property in Maryland. The trial court’s Opinion was filed on April 28, 2016.

The Opinion states that at the time the Deed and JVA were signed, Ms. Jones was the personal representative and therefore had the authority to sign those documents. As to appellant’s claims, the court found that the Deed was not voided for lack of consideration because JSC pledged services in exchange for an interest in the Property. The court also found that appellant produced no evidence of misrepresentation or fraud on the part of JSC that would otherwise invalidate the Deed and JVA. Lastly, the court found that JSC did not breach the JVA by not loaning funds to stop the tax sale because such a loan was not necessary. As to JSC’s counterclaims, the court rejected all of them on the basis that JSC could not maintain a cause of action in Maryland. Appellant timely noted an appeal.⁶

⁶ Appellees did not note an appeal from the trial court’s order. In their brief, appellees argue that the trial court erred in denying the counterclaim for breach of contract. A party that seeks to “attack, modify, reverse, or amend a judgment . . . is required to appeal or cross appeal from that judgment.” *Geier v. Md. State Bd. of Physicians*, 223 Md. App. 404, 428 (2015) (quoting *Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989)). Accordingly, we will not consider the propriety of the trial court’s dismissal of the appellees’ counterclaims.

STANDARD OF REVIEW

When reviewing a bench trial, “the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *L.W. Wolfe Enters., Inc. v. Md. Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (internal citations and quotation marks omitted), *cert. denied*, 391 Md. 579 (2006). Conclusions of law, however, we review *de novo*. *Kunda v. Morse*, 229 Md. App. 295, 303 (2016) (citing *Banks v. Pusey*, 393 Md. 688, 697 (2006)).⁷

DISCUSSION

From what we are able to glean from appellant’s brief, appellant contends that the trial court erred in finding the Deed valid for two reasons: 1) the Deed lacks consideration, and 2) JSC is not allowed to own title to property in Maryland. We disagree with both contentions and affirm the trial court’s decision.

⁷ Maryland Rule 8-504(a)(5) requires an appellate brief to contain a concise statement of the applicable standard of review. Appellant failed to include the standard of review in his brief.

Consideration

In his brief, appellant first argues that the trial court erred in finding the Deed valid when it stated that it conveyed an interest in the Property for “No Dollars 00/100 (\$.00).” Appellant explains that Ms. Jones “had no authority on a verbal undertaking – to convey away to a stranger – whether corporate or individual – a one-half interest – in the property of the estate for *no consideration*.” (Emphasis added). Appellant goes on to explain that personal representatives do not have the power to make gifts other than at the direction of the decedent.

The trial court’s Opinion found that “A deed is not voided by the fact that no monetary consideration was paid, since here the Defendants had pledged services in exchange for an interest in the property.” If there is any material evidence to support the court’s factual findings, those findings cannot be said to be clearly erroneous. *L.W. Wolfe Enters., Inc.*, 165 Md. App. at 343. The “services” the trial court referenced are described fully in Section 1.1 of the JVA. That section states,

[JSC] will negotiate, consult and coordinate with various parties to stop the foreclosure process. This includes but is not limited to negotiating fees that are due, loaning (if needed) [the Estate] the funds necessary to pay all fees and taxes due to stop the foreclosure. In the event [JSC] needs to loan [the Estate] the abovementioned funds, [JSC] will be reimbursed said funds out of the sale of the property before any fees are charged to [the Estate].

In addition to the clear language in the JVA, appellant introduced testimony that bolstered the fact that the Deed was supported by consideration.

Appellant's first witness at trial was Lisa Bosse, a former attorney at Classic Settlements who handled the cancelled sale in September of 2012. When appellant asked her whether she had a problem with the Deed, Bosse testified, "Yes, we had a problem with the Deed. . . . The prob -- part of the problem was the fact that it said there was no consideration when there was, in fact, consideration. I mean, that's a pretty significant part of it for us." Furthermore, during Bosse's testimony, appellant introduced into evidence several relevant e-mails from Classic Settlements. In an e-mail dated September 10, 2012, William O'Connell of Classic Settlements wrote to Bosse that, "The deed is not valid because it says it is for zero consideration. We know that is not true. It is actually for a 50% interest in the Property. And the Estate has not accounted for the sale of the 50% interest." Because of the ample evidence that the Estate conveyed a 50% interest in the Property in exchange for JSC's promise to remove the Property from the tax sale, the trial court's finding of extant consideration here was not clearly erroneous.

Although appellant cites to cases that state that a personal representative may not make transfers without consideration, he provides no support for the proposition that a promise to provide services does not constitute consideration. This is likely so because no such support exists. "In Maryland either detriment to the promisor or benefit to the promisee is sufficient valuable consideration to support a contract." *Shimp v. Shimp*, 287 Md. 372, 385 (1980). Further, Maryland has long permitted the rendering of services to constitute sufficient consideration for the granting of an interest in real property. *See Hanson v. Urner*, 206 Md. 324, 334 (1955) (stating that, "the rule is thoroughly understood

that an oral contract to devise real property in consideration of services rendered may be established by parol evidence of witnesses who were not present at the making of the contract.”).

Here, the JVA articulated that the appellees would stop the foreclosure process in exchange for a 50% interest in the Property. “Generally, courts will not inquire into any inherent disparity in the utility of a given exchange between the parties, but solely into its voluntariness.” *CAS Severn, Inc. v. Awalt*, 213 Md. App. 683, 693 (2013) (internal citations and quotations omitted). The trial court did not err when it concluded that the Deed was supported by consideration and therefore valid.

Non-Registered Non-Maryland Corporations

The final issue appellant appears to raise is whether an unregistered foreign corporation can hold title to property in Maryland. We note that Md. Code (1975, 2014 Repl. Vol.) § 7-203 of the Corporations and Associations Article (“CA”) requires a foreign corporation to qualify before doing any intrastate business in Maryland. Corporations and Associations § 7-205 requires a foreign corporation to maintain a resident agent, among other things, in order to do business in Maryland. These sections, however, relate to whether a corporation “does business” in Maryland because CA § 7-301 precludes a foreign corporation which does business in Maryland from maintaining a suit, i.e. suing a defendant, in certain circumstances.⁸ Whether JSC “does business” in Maryland

⁸ The Court of Appeals has referred to “maintaining a suit” as the ability of the corporation to “sue” a defendant. *See Yangming Marine Transp. Corp. v. Revon Prod.*

sufficiently for it to maintain a suit does not impact whether it can hold an interest in property. Instead, the applicable statute here is CA § 7-305 which states that, “The failure of any foreign corporation to comply with any of the requirements of Subtitle 2 [Registration and Qualification of Corporation] of this title does not affect the validity of any contract to which the corporation is a party.” Put simply, whether JSC is permitted to maintain a suit in Maryland pursuant to an analysis of whether it “does business” in Maryland does not affect the validity of its contract with the Estate. The Deed, therefore, is not invalidated by JSC’s status as an unregistered foreign corporation.

**JUDGMENT OF THE CIRCUIT
COURT FOR HOWARD COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

U.S.A., Inc., 311 Md. 496, 502 (1988) (stating that, “Under this test, § 7-301 bars an unqualified or unregistered foreign corporation from suing in Maryland courts only if the corporation is doing such a substantial amount of localized business in this State that the corporation could be deemed ‘present’ here.”).