

SUPREME COURT OF VIRGINIA

White v. Llewellyn

White · No. Record No. 191599 · Decided May 6, 2021

SUMMARY

The Supreme Court of Virginia considered the effect of a presumption of fraudulent conveyance arising from proof of badges of fraud. The Court held that, under Virginia precedent, the presumption shifts both the burden of production and the burden of persuasion to the party seeking to uphold the transaction, who must establish its bona fides by strong and clear evidence. The Court reversed the circuit court’s dismissal of the complaint and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice S. Bernard Goodwyn; All the Justices
JURISDICTION	Virginia
DECIDED	May 6, 2021
DOCKET	Record No. 191599
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	White appealed the dismissal of her fraudulent conveyance action and the denial of her request for attorneys' fees. The appeal challenged the circuit court's ruling that proof of badges of fraud shifted only the burden of production, not the burden of persuasion, to the defendants.
STANDARD OF REVIEW	The Supreme Court reviewed the circuit court's legal allocation of the burdens of production and persuasion and the resulting standard of proof. Because the circuit court applied an incorrect legal standard, the Supreme Court could not determine whether the evidence warranted judgment for White.
PRECEDENTIAL VALUE	Published opinion; binding Virginia Supreme Court precedent.
PARTIES	Ann Michelle White v. Ann Elizabeth Llewellyn, David Bradford Llewellyn

TOPICS

- burden of proof
- presumptions
- civil procedure
- appellate procedure
- remedies

PRACTICE AREAS

civil procedure

evidence

real estate

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether, in a Virginia fraudulent conveyance case, proof of badges of fraud shifts both the burden of production and the burden of persuasion to the party seeking to uphold the transaction.
2. What standard of proof applies to the defendants' rebuttal of the presumption of fraudulent conveyance.
3. Whether the circuit court's dismissal and denial of attorneys' fees could stand after it applied the wrong allocation and standard of proof.

HOLDINGS

1. When a plaintiff establishes a presumption of fraudulent conveyance by proving badges of fraud, the presumption is governed by the Morgan theory and shifts both the burden of production and the burden of persuasion to the party seeking to uphold the transaction.
2. A defendant seeking to uphold a transaction subject to a presumption of fraudulent conveyance must rebut that presumption with strong and clear evidence establishing the bona fides of the transaction.
3. The circuit court erred by shifting only the burden of production and by failing to require strong and clear evidence to rebut the presumption; the judgment therefore had to be reversed and the case remanded for further proceedings.

KEY QUOTATIONS

“We conclude that, in requiring defendants to “prove” and “establish” the bona fides of a transaction by strong and clear evidence once the presumption of a fraudulent conveyance is established, our precedent has required the shifting of the burden of persuasion as well as the burden of production to the defendant, in fraudulent conveyance cases.” (at 10)

“On this issue of first impression, we agree with White’s position that a presumption of fraudulent conveyance, created upon the proof of badges of fraud, shifts both the burdens of production and persuasion to the party seeking to uphold the validity of the transaction by rebutting the presumption.” (at 11)

FACTUAL BACKGROUND

White was injured in a 2013 automobile collision involving Ann Llewellyn and later obtained a \$1.5 million judgment against Ann in a personal injury action. While that action was pending, Ann and Brad Llewellyn finalized their divorce and later executed a deed of gift transferring the Henrico County residence to Brad for mutual love and affection. Ann and the parties' children continued to occupy the residence rent-free after the transfer. White alleged that the conveyance was fraudulent based on several badges of fraud, including the familial relationship, lack of consideration, Ann's alleged insolvency, and her continued possession of the property.

PROCEDURAL HISTORY

White sued the Llewellyns to void a deed of gift transferring the residence from Ann to Brad as a fraudulent conveyance. After a trial, the circuit court found that White had established a presumption of fraudulent conveyance by proving several badges of fraud, but held that the defendants' burden was limited to producing countervailing evidence and that White retained the burden of persuasion by clear and convincing evidence. The court found the defendants' testimony credible, dismissed the complaint, and denied attorneys' fees. The Supreme Court of Virginia reversed and remanded because the circuit court applied the wrong allocation and standard of proof.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings not inconsistent with the opinion, including reconsideration under the rule that the defendants bear both the burden of production and the burden of persuasion and must establish the bona fides of the transaction by strong and clear evidence. The circuit court must also reconsider whether White is entitled to judgment and attorneys' fees.

CASES CITED

- La Bella Donna Skin Care, Inc. v. Belle Femme Enters., LLC, 294 Va. 243, 254 (2017)
- Parson v. Miller, 296 Va. 509, 524-26 (2018)
- Fox Rest Assocs., L.P. v. Little, 282 Va. 277, 285-86 (2011)
- Hickman v. Trout, 83 Va. 478, 490-92 (1887)
- Hutcheson v. Savings Bank of Richmond, 129 Va. 281, 292-96 (1921)
- First Nat'l Bank of Bluefield v. Pressley, 176 Va. 25, 30 (1940)
- Fowlkes v. Tucker, 164 Va. 507, 511 (1935)
- Life & Cas. Ins. Co. of Tenn. v. Daniel, 209 Va. 332, 340-42 (1968)
- Young v. Commonwealth, 34 Va. App. 309, 311-12 (2001)
- Volvo White Truck Corp. v. Vineyard, 239 Va. 87, 91-92 (1990)
- SunTrust Bank v. PS Business Parks, L.P., 292 Va. 644, 652 (2016)
- Nuckols v. Nuckols, 228 Va. 25, 37 (1984)

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