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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master In Equity

The Honorable Joseph M. Strickland

Appellate Case No. 2019-000297

Mathes Auto Sales, Inc., Respondent/Appellant,

v.

Otis Morris, Jr., Pro Bowl Motors, Inc., Travelers Casualty & Surety Co. of America, Inc., Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC, Defendants,

Of Whom Otis Morris, Jr., Pro Bowl Motors, Inc., Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC, are the Appellants/Respondents.

RETURN TO PETITION FOR REHEARING BY APPELLANTS/RESPONDENTS OTIS MORRIS, JR., AND PRO BOWL MOTORS, INC.

INTRODUCTION

Notwithstanding the vehement denials of Morris and Pro Bowl in their pleadings, and Morris' assertion of his Fifth Amendment privilege against self-incrimination at his deposition, nearly six full years after misappropriating over $35,000 belonging to MAS, Morris and Pro Bowl finally admit it. "Otis Morris, wrongfully placed the purchase of a vehicle on the floor plan account of Mathes Auto Sales, Inc. in the amount of $35,368.00 without the consent of Mathes". (Petition For Rehearing By Appellants/Respondents Otis Morris, Jr., And Pro Bowl Motors, Inc. at page 2, second paragraph, first sentence).

Without having accounted for $16,026 from the credit union and $20,000 from Worthy pocketed by Morris, these two thieves seek a credit for a discharge of indebtedness secured by MAS from NextGear without any assistance from them whatsoever, and only after MAS had

incurred tens of thousands of dollars in attorney's fees and costs. They also seek a credit for sums recovered by MAS even later from a licensing bond issued not for their protection, but for the protection of the public. Finally, they complain about the award of damages, even though the amount of actual and punitive damages awarded was only 50% of the actual damages that the lower court determined that MAS had suffered at their hands.

The Court of Appeals should give short shrift to these specious arguments and dismiss the petition.

THE LAW

A petition for rehearing must be made in accordance with Rule 240, SCACR, and must state with particularity the points that the court supposedly overlooked or misapprehended. Rule 221(a) SCACR; see *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 564 S.E.2d 322 (2001) explaining that to prevail on a petition for rehearing the appellants must demonstrate that the Court overlooked or misapprehended an argument. The purpose of a petition for rehearing is not to present points that a lawyer did not present to the court in his briefs, nor is the purpose of a petition for rehearing to have the case tried in the appellate court a second time. *Kennedy*, 349 S.C. 531, 564 S.E.2d 332; *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933).

I. THE DISCHARGE OF INDEBTEDNESS SECURED BY MAS FROM NEXTGEAR WITHOUT ANY ASSISTANCE FROM THESE TWO THIEVES CONSTITUTES COMPENSATION FROM A SOURCE WHOLLY INDEPENDENT FROM THEM AND THEIR CLAIM TO A CREDIT IS BARRED BY THE COLLATERAL SOURCE RULE.

Neither Morris nor Pro Bowl contributed a dime towards MAS' discharge of indebtedness by NextGear. This argument was addressed in great detail on pages 10 – 13 of the Final Respondent's Brief Of Respondent/Appellant filed on February 21, 2020.

"A creditor's forgiveness of debt . . . is often considered equivalent to payment in other contexts . . . and is properly considered a third-party 'payment', evidence of which is barred by the collateral source rule." *Kenny v. Liston*, 233 W. Va. 620, 760 S.E.2d 434 (2014). See also *McConnell v. Wal-Mart Stores, Inc.*, 995 F. Supp. 2d 1164, 1170 (D. Nev. 2014).

Even "a negligent defendant is not entitled to enjoy the fruits of fortuitous circumstances, employer generosity, or diligent effort on the part of the injured plaintiff" to reduce the tortfeasor's liability. *Steeves v. United States*, 294 F. Supp. 446, 457 (D.S.C. 1968).

II. MORRIS AND PRO BOWL MISTAKENLY CONFLATE THE NATURE OF THE SURETY BOND REQUIRED FOR LICENSURE UNDER S.C. CODE ANN. SECTION 56-15-320(B) WITH LIABILITY INSURANCE.

Morris and Pro Bowl failed to include Pro Bowl's surety bond, which they claim protected them, in the Record on Appeal. However, a letter from the South Carolina Department

of Motor Vehicles dated June 30, 2016, is included at page 401.

According to that letter, their surety bond was canceled effective July 29, 2016, seventeen days before Morris "wrongfully placed the purchase of a vehicle on the floor plan account of Mathes Auto Sales, Inc., in the amount of $35,368.00 without the consent of Mathes". (Petition For Rehearing By Appellants/Respondents Otis Morris, Jr., And Pro Bowl Motors, Inc., page 2, first sentence of second paragraph and (Final Brief Of Appellants/Respondents Otis Morris, Jr., And Pro Bowl Motors, Inc. at page 5, first sentence of third paragraph).

Even if they had included the canceled surety bond in the Record on Appeal, they would fare no better. The licensing statute requires that that "the bond must be given to the department . . . *as indemnification for loss or damage suffered by an owner of a motor vehicle* . . . by reason of fraud practiced . . . in connection with the sale or transfer of a motor vehicle . . . *or loss or damage suffered by reason of the violation by the dealer . . . of this chapter. An owner* . . . who suffers the loss or damage has a right of action against the dealer . . . and against the . . . surety upon the bond and may recover damages as provided in this chapter. (emphasis added).

A copy of the Dixon partners bond is included in the Record on Appeal at page 392. It clearly provides "that the Principal and the Surety are held and firmly bound into [sic] the people of the State of South Carolina *to indemnify any owner of a motor vehicle who may be aggrieved by any fraud* . . . Neither Morris nor Pro Bowl have ever contended that they were "an owner of the vehicle".

They mistakenly conflate the nature of the surety bond with liability insurance, which they didn't have, and has no bearing on this case. It is elementary that liability insurance does not provide coverage for intentional acts.

The bond required by the licensing statue is not intended to protect thieves. Rather, the bond is required as a condition of licensure to protect victims of theft by financially irresponsible dealers and their morally bankrupt principals.

III. SINCE THE AMOUNT OF ACTUAL AND PUNITIVE DAMAGES AWARDED WAS ONLY 50% OF THE ACTUAL DAMAGES THAT THE LOWER COURT DETERMINED THAT MAS HAD SUFFERED AT THE HANDS OF THESE TWO THIEVES, THEY SHOULD NOT BE HEARD TO COMPLAIN.

The lower court found that MAS had suffered damages of $670,286 including attorney's fees. (App., p. 16). The lower court awarded MAS attorney's fees and costs of $102,489.98. The difference between those two figures is $567,796.02.

The total actual and punitive damages awarded of $282,944 represents only 50% of the actual damages that the lower court determined that MAS had suffered at the hands of Morris and Pro Bowl.

CONCLUSION

In addition to a credit for the discharge of indebtedness from NextGear that MAS secured without any assistance whatsoever from them, and a credit for sums recovered from a surety for their fraud, these two thieves now want a break on a very conservative award of actual and punitive damages.

Are you kidding me? Only a disbarred thief from the Lowcountry has a greater sense of entitlement!

This petition is unfounded and laughable. The Court of Appeals didn't overlook or misapprehend anything presented by Morris and Pro Bowl. Rule 221(a), SCACR.

This petition should be dismissed.

Respectfully submitted,

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July 5, 2022

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PROOF OF SERVICE

I certify that I have served a copy of the Return To Petition For Rehearing By Appellants/Respondents Otis Morris, Jr., And Pro Bowl Motors, Inc. on Otis Morris, Jr. and Pro Bowl Motors, Inc., by depositing it in the United States Mail, postage prepaid, on July 5, 2022, addressed to their attorney of record, H. Ronald Stanley, Post Office Box 7722, Columbia, South Carolina 29202.

July 5, 2022

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