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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
In the Circuit Court
York County Civil Action Number 2019-CP-46-01446

The Honorable Teasa K. Weaver, Master in Equity Judge,

Appellate No. 2021-001081

Robert H. Sarn, Appellant

v.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military person, who claim any right, title, or interest in, lien upon, the entity designated as "Täschner Textiles Industries, LLC": Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in or lien upon, the entity designated as Täschner Textile Industries, LLC," Defendants

Of whom James C. Rhea, III and Täschner Textile Industries, LLC are the Respondents

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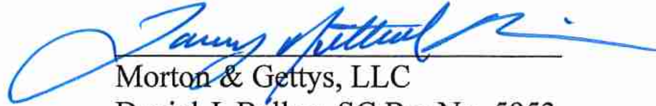
RESPONDENT JAMES C. RHEA, III'S FINAL BRIEF

July 27, 2022



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STATEMENT OF ISSUES ON APPEAL

I. Did the Court properly grant Summary Judgment in favor of Täschner Textiles Industries, LLC, and James C. Rhea, III?

STATEMENT OF THE CASE

This action commenced on April 25, 2019, when Appellant filed a Summons and Complaint in the York County, South Carolina, Circuit Court, seeking contribution from the Defendants for the costs of maintaining and repairing Rental Court, a privately-owned road situated in Rock Hill, South Carolina. (Am. R. pp. 19-24). Respondents City Electric Supply Company ("CES") and James C. Rhea, III ("Rhea") timely filed answers to the Complaint. (Am. R. pp. 66-69). Rhea served discovery on Appellant on August 29, 2019. On August 22, 2019, Appellant filed for default judgment against Täschner Textiles Industries, LLC ("TTI"). TTI, in turn, filed a motion to dismiss for failure of service of process on August 26, 2019. (Am. R. p. 80-91). On September 3, 2019, Appellant served both discovery requests and a subpoena on TTI, seeking information in support of Appellant's motion for default. (Am. R. p. 185-191). TTI moved to quash the subpoena and attained the trial court's permission to hold discovery responses in abeyance pending the outcome of TTI's Motion to Dismiss. (Am. R. pp. 97-107).

Following a continuance requested by Appellant, the Honorable Daniel D. Hall granted TTI's Motions to Dismiss, dismissing TTI from the action. (Am. R. pp. 12-14). Counsel for TTI ultimately accepted service of the Summons and Complaint and timely answered, denying all allegations of wrongdoing and Appellant's right to contribution. (Am. R. pp. 56-60). Because Appellant still had not corrected the case caption, an issue leading to the Motion to Dismiss granted in favor of TTI, the parties stipulated to Appellant's ability to amend his Complaint on June 1, 2020. Appellant filed an Amended Summons and Complaint on June 2, 2020. (Am. R. pp. 52-55).

On September 11, 2020, TTI took the Appellant's deposition. Counsel for Rhea and CES also attended the deposition. Following receipt of the deposition transcript, TTI and Rhea moved for summary judgment. (Am. R. pp. 108-110; 111-157). On December 1, 2020, TTI electronically filed a Notice of Hearing, informing all parties a hearing on the Motion for Summary Judgment would be held on January 12, 2021. (Am. R. pp. 162-163). On January 11, 2021, one day before a hearing on summary judgment, more than seven months after filing his amended complaint, and more than one and a half years after initially filing, Appellant served requests for production on TTI and Rhea. (Am. R. pp. 192-205). Appellant subsequently requested a continuance of the January 12, 2021, hearing due to technical difficulties associated with WebEx. Judge Teasa Weaver, York County Master in Equity, heard the Motion on January 21, 2021. At the hearing, Appellant relied largely on the outstanding discovery requests, served less than two weeks prior to the hearing, as the grounds for denying summary judgment. (Am. R. pp. 164-173).

Judge Weaver granted summary judgment on March 31, 2021. (R. pp. 1-8). Appellant then filed a Motion to Reconsider on April 12, 2021, which Judge Weaver denied on August 25, 2021. (Am. R. pp. 174-178; 9-11). This appeal followed. (Am. R. pp. 290-291).

STANDARD OF REVIEW

In reviewing the grant of a summary judgment motion, appellate courts apply the same standard which governs the trial court. *Regions Bank v. Schmauch*, 354 S.C. 648, 659, 582 S.E.2d 432, 438 (Ct. App. 2003) (citing Rule 56(c), SCRCP; *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991)). Summary judgment is proper when there is no genuine issue of fact, and the moving party is entitled to judgment as a matter of law. *Id.* Once the moving party shows a lack of evidentiary support for the nonmoving party's claims, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial in order to avoid

summary judgment. *See Baughman*, 306 S.C. at 115, 410 S.E.2d at 545. In ruling on the motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). Where the nonmoving party has the burden of proof, it is that party's obligation to confront the motion for summary judgment with specific facts demonstrating all elements of the claim. *Id.* Where a nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case, the moving party is entitled to judgment as a matter of law. *Id.*

ARGUMENT

I. The Court properly granted Summary Judgment in favor of Täschner Textiles Industries, LLC, and James C. Rhea, III.

a. Appellant assumed the responsibility of maintaining Rental Court.

Rental Court is a private road providing access to all the commercial lots in a business park situated in Rock Hill, South Carolina, near the intersection of Constitution Boulevard and Westerwood Drive. In conveying out parcels on Rental Court, Appellant affirmatively assumed the responsibility for the cost of maintaining Rental Court and concedes that no agreements to the contrary have ever existed regarding the Respondents. (Am. R. pp. 213, 221, 223, 224, 227)[1]. Rather, Appellant relies only on some unspecified "moral obligation" he claims is owed by the Respondents that entitles him to recovery in this matter. (Am. R. p. 224)[2].

Appellant expressly undertook the obligation to maintain Rental Court in multiple documents recorded with the York County Register of Deeds. First, in the deed ("JDPC Deed")

[1] Appellant Dep. 35:2-7; 65:18-23; 74:22-75:1; 78:18-21; 90:22-24.

[2] Appellant Dep. 78:23; 79:16-80:2.

from Appellant to J.D. Properties of the Carolinas, LLC ("JDPC") for the lot now owned by TTI ("TTI Parcel") conveys title and includes the following language in the granting clause:

> TOGETHER WITH THE EASEMENT, being a non-exclusive, perpetual easement for ingress and egress to the Property from Constitution Boulevard along the private road, being approximately 50' in width, shown on the above-referenced plat and referred to as Rental Court and Easement Area. Said easement shall benefit the Property, the Grantee, its licensees, agents, lessees, and successors and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land. Grantor covenants that is [sic] shall cause to be done no act or omission within the Easement Area which shall infringe upon Grantee's interest therein hereby conveyed, and that *Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement.*

(Am. R. p. 129) (emphasis added). By the express terms of the JDPC Deed, Appellant granted an ingress and egress easement that obligates him to maintain Rental Court until such time Rental Court is designated as a public road. Rental Court is not a public road currently and was not a public road at any point during this litigation. (Am. R. p. 217)[3]. Appellant received $570,000.00 in exchange for the sale of TTI Parcel to JDPC, and the easement and obligations created in the deed run with the land. (Am. R. p. 228)[4]. When JDPC sold the TTI Parcel to TTI, the deed ("TTI Deed") contained identical easement language. (Am. R. pp. 131-132).

Contemporaneously with the sale of TTI Parcel to JDPC, Appellant executed a Grant of Easement and Right of Way ("Right of Way"). In pertinent part, the Right of Way provides:

> Now therefore, KNOWN ALL MEN BY THESE PRESENTS that Robert H. Sarn, owner in fee simple of TRACT A (now consisting of 1.75 acres and 0.87 acres) and possibly owner of said PRIVATE ROAD commonly known as Rental Court, hereby grants J.D. Properties of the Carolinas, LLC, its successors and assigns, a right of way or easement for the purpose of ingress and egress approximately (50')

[3] Appellant Dep. 51:8-13.
[4] Appellant Dep. 93:19-23.

> feet wide which is shown as Rental Court on Plat Recorded in Plat Book C-76 at Page 8 . . . . *By signing this Agreement, Robert H. Appellant, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost of upkeep and maintenance of said private road.*

(R. pp. 139-139) (emphasis added). A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. *Binkley v. Rabon Creek Watershed Conversation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). When interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties' intentions, as long as those intentions do not contravene the law or public policy. *See Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 420, 143 S.E.2d 803, 806 (1965). The intention of the grantor must be found within the four corners of the deed. *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 584 (2009) (citing *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987)). Generally, in the absence of evidence to the contrary, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will construe the instruments together. *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).

The court need look no further than the language of the JDPC Deed, TTI Deed, and Right of Way to determine the intention of the parties. In JDPC Deed, Appellant agrees to "keep the [Easement] in such a state of repair and condition as is commensurate with the first class nature of [the] development" until the Easement is dedicated as a public right of way. (Am. R. p. 129). The TTI Deed contains identical language. (Am. R. p. 131). Appellant went a step further than the language in the JDPC Deed and, in the Right of Way, expressly undertook the obligation to pay "the total cost of upkeep and maintenance" of Rental Court. (Am. R. pp. 138-139). Under these facts, Appellant has no basis in law or equity to foist the responsibility he voluntarily assumed upon the Defendants.

b. Appellant agreed to resurface Rental Court in connection with the sale of the GR Properties Parcel.

Not only did Appellant commit to the cost of maintaining Rental Court when he sold the TTI Parcel, but he privately negotiated the repaving of the road as a condition to the sale of a parcel of land bearing York County Tax Map ID No. 596-04-01-004 ("GR Properties Parcel") to GR Properties of Fort Mill, LLC ("GR Properties") in 2018. (Am. R. pp. 140-141). Appellant made that agreement without any consultation or participation by TTI or Rhea, and as a result of making that agreement, Appellant netted $853,815.17 of the agreed-upon sales price of $989,000.00. (Am. R. p. 212)[5]. The deed for the sale of the GR Properties Parcel ("GR Properties Deed"), as well as the associated closing statement ("GR Properties Closing Statement") and escrow agreement ("GR Properties Escrow Agreement"), reflect this arrangement. (Am. R. p. 137). Appellant agreed to resurface Rental Court as an inducement to the sale to GR Properties and did so for his sole benefit. Having negotiated the repaving as a term of the sale, Appellant has no legal or equitable basis to look to others to offset the expense.

The sole authority Appellant offered to justify his claim at the summary judgment hearing is *Hayes v. Tompkins*, 287 S.C. 289, 337 S.E.2d 888 (Ct. App. 1985). In *Hayes*, the owner of a subdivided lot claimed an ingress/egress easement over another parcel, both of which were originally part of a larger tract. *Id.* at 290, 337 S.E.2d at 889. Having found an easement by necessity, the Court imposed on the easement holder an equitable duty to contribute to the maintenance of the easement on the servient parcel. *Id.* at 294, 337 S.E.2d at 891. In so holding, however the Court stated that "[i]n *the absence of an agreement*, the ... owners of the servient tenement are under no duty to maintain and repair the easement ... for the benefit of the dominant tenement." *Id.* (emphasis added). In his initial brief, Appellant cites a number of cases from various

[5] Appellant Dep. 29:11-19; 29:20-30:5; 31:6-9.

jurisdictions that echo the general rule in *Hayes*, namely *Richardson v. Jennings*, 184 N.C. 559, 114 S.E. 821 (1922), in which the Supreme Court of North Carolina also recognized parties could contract around the general rule of easement maintenance, as Appellant twice did in connection with the sale of the TTI Parcel.

Here, Appellant, as the owner of the servient tenement has in fact agreed to maintain the Easement and made that agreement a covenant running with the land. So too, he agreed again to bear the cost of maintaining Rental Court by specifically factoring that cost into the sale of the GR Properties Parcel, for which he made almost one million dollars. Over and over again, Appellant has voluntarily agreed to undertake the responsibility to maintain Rental Court as a part of selling parcels, and no equitable principle exists that would allow him to renounce that obligation when it becomes inconvenient.

c. Appellant's failure to complete discovery does not serve as a bar to summary judgment.

Appellant's contention that summary judgment was improper because discovery was not complete fails to withstand scrutiny. In *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003), the Court acknowledged that summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1990)). In *Baughman*, the seminal case on the issue, the Supreme Court explained that the nonmoving party must nonetheless demonstrate (1) the likelihood that further discovery will uncover additional evidence relevant to the issue; and (2) that he or she was not dilatory in seeking discovery on the issue. *Id.* at 112-13, 410 S.E.2d at 544. As the Court has noted repeatedly, the rules do not condone a mere "fishing expedition." *Id.*

First, Appellant served discovery requests on the day before the initial scheduling of the hearing on the Respondent's motion for summary judgment. Even at the hearing, continued at Appellant's request, Appellant was unable to identify for Judge Weaver any discovery that remained to be completed that would be relevant in opposition to the motion. (R. pp. 164-173). In his Memorandum in Opposition to TTI's Motion for Summary Judgment, Appellant stated only "there is every indication that Defendants may be in possession of other documents relevant to this case" because TTI entered exhibits at Appellant's deposition (conducted four months earlier) he claims he had not been seen before. (R. p. 166). However, the vast majority of those exhibits were either public records or documents obtained from Appellant's own real estate closings. (Am. R. pp. 209, 211-212, 215-217, 234)[6]. Likewise, all the documents referenced in Judge Weaver's Order granting summary judgment were either public records or previously in Appellant's own possession. (Am. R. pp. 1-8). At the summary judgment hearing, in response to a direct question from the Court, Appellant's counsel denied the existence of any other agreements regarding the easements at issue. (Am. R. p. 279). In sum, Appellant failed to carry his burden under the first prong under *Baughman*, and Judge Weaver correctly found that additional discovery would not alter the outcome of the summary judgment analysis.

So too, Appellant waited until the eleventh hour to even serve discovery requests and cannot now use his own delay to avoid summary judgment. The only discovery requests served by Appellant before January 11, 2021, were focused primarily on service of process on TTI. (Am. R. p. 94). Appellant did not serve any further discovery requests until January 11, 2021, one day before the originally scheduled hearing on TTI's motion for summary judgment. If, as Appellant

[6] Appellant did not include the exhibits to his deposition transcript in the Record on Appeal, and Respondent has instead cited to the pages of the transcript of Appellant's deposition in which relevant exhibits are introduced.

now argues, the exhibits entered at his deposition are the grounds for further discovery, Appellant allowed four months to elapse before seeking clarity on the issue.

Being unable to satisfy either prong of *Baughman*, Appellant is not entitled to avoid summary judgment on the grounds of incomplete discovery.

d. The documents in which Appellant assumes the responsibility of maintaining Rental Court are not ambiguous.

Appellant argues the Right of Way and JDPC Deed are ambiguous, and that the ambiguity conveniently negates his responsibility to maintain Rental Court. The two provisions forming the basis of Appellant's ambiguity claim are, first, from the JDPC and TTI Deeds:

> TOGETHER WITH THE EASEMENT, being a non-exclusive, perpetual easement for ingress and egress to the Property from Constitution Boulevard along the private road, being approximately 50' in width, shown on the above-referenced plat and referred to as Rental Court and Easement Area. Said easement shall benefit the Property, the Grantee, its licensees, agents, lessees, and successors and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land. Grantor covenants that is [sic] shall cause to be done no act or omission within the Easement Area which shall infringe upon Grantee's interest therein hereby conveyed, and that Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement.

And, second, from the Right of Way:

> Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, shall not be the responsibility of Robert H. Sarn, his heirs and assigns, including, but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, LLC, its successors or assigns.

The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (citing *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d

132, 134 (2003)). Where a contract's language is clear and unambiguous, the language alone determines the contract's force and effect. *Id.* A written instrument is ambiguous if it can be understood in more ways than just one. *Frewil, LLC v. Price*, 411 S.C. 525, 531, 769 S.E.2d 250, 253 (Ct. App. 2015). A contract must be read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. *McGill*, 381 S.C. at 185, 672 S.E.2d at 574. It is a question of law for the court when the language of a contract is ambiguous. *Id* (citing *S.C. Dep't of Natural Res. V. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001)). Ambiguous language in a contract should be interpreted strongly in favor of the non-drafting party. *See id.* at 186, 672 S.E.2d at 575 (citing *S. Atl. Fin. Servs., Inc. v. Middleton*, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003)). Neither TTI nor Rhea drafted the JDPC Deed or the Right of Way.

Appellant takes the position that the existence of two provisions that each use the phrases "easement" and "right of way" creates an unintelligible document destined for rescission. Appellant goes on to argue the phrase "natural occurrences" must "of necessity" include "future wear and tear on Rental [Court]," but provides no contractual, statutory, or precedential basis for this claim. Appellant Initial Br., 8. Appellant's argument culminates with the claim that "[Sarn] was to repair the road shortly at or shortly after the date of the 'Grant of Easement and Right of Way', while the future upkeep will be the responsibility of [TTI's] predecessor, and thus of [TTI]." Appellant would have this Court believe, despite clear written evidence to the contrary, that Appellant intended for his maintenance obligation to extend only until right after he realized the value of his promise and extinguished immediately upon the JDPC taking possession of the TTI Parcel. It should be noted the transcript citation made by Appellant in his Initial Brief in support

of the above argument refers to repairs made in conjunction with the sale of the GR Properties Parcel to GR Properties, not the sale of the TTI Parcel to JDPC or TTI.

The contracts at issue are not open to multiple reasonable interpretations. In the JPDC Deed, the TTI Deed, and the Right of Way, Appellant explicitly undertakes the responsibility of maintaining Rental Court. In the portion of the Right of Way cited on page seven of Appellant's initial brief, the Right of Way provides Appellant will not be responsible for any damage to the *use* of the easement. That is, Appellant is required to maintain Rental Court, but he is not liable to JDPC, its heirs or assigns, if they are unable to use Rental Court due to natural occurrences. These two provisions are easily read in harmony and clearly define the legally enforceable rights and responsibilities of the parties. In sum, the contract is not ambiguous.

CONCLUSION

Based on the above, the trial court did not err in granting summary judgment to TTI and Rhea. Appellant is not entitled to relief, and the Order of the trial court must be affirmed.

July 27, 2022

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CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

The undersigned certifies that the foregoing Final Brief of Respondent James C. Rhea, III, complies with Rule 211(b) of the South Carolina Appellate Court Rules.

July 27, 2022

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PROOF OF SERVICE

The undersigned certifies that he has served Respondent James C. Rhea, III's Final Brief by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2022, addressed to its attorneys of record to the below addresses:

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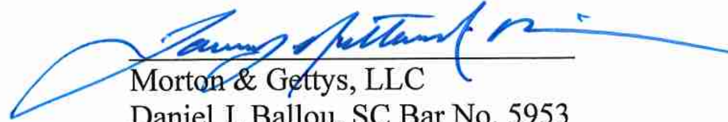

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