PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Opinion No. 2022-UP-253 (S.C. Ct. App. filed June 8, 2022 and Withdrawn, Substituted, and Refiled July 20, 2022)

Mathes Auto Sales, Inc. Respondent

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, Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC are the Petitioners.

PETITION FOR WRIT OF CERTIORARI ON BEHALF OF DIXON'S AUTOMOTIVE, LLC; GERALD SCOTT DIXON, INDIVIDUALLY; AND MICHAEL TYRONE MOORE, INDIVIDUALLY.

Leland B. Greeley
LELAND B. GREELEY, P.A.
P. O. Box 2981
Rock Hill, South Carolina 29732
(803)329-0088
lgreeley@lbgreeleylaw.com
S.C. Bar No.: 7850

Attorney for Petitioners Dixon Automotive, LLC; Gerald S. Dixon; and Michael T. Moore

J. Gregory Studemeyer
Attorney at Law
1701 Richland Street
Post Office Box 12201
Columbia, South Carolina 29211-2201
Attorney for the Mathes Auto Sales, Inc.

H. Ronald Stanley
The Stanley Law Group
Post Office Box 7722
Columbia, South Carolina 29202
Attorney for Otis Morris, Jr., and Pro Bowl Motors.

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on July 20, 2022.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the trial court's denial of Dixon Automotive, LLC's, Gerald S. Dixon's, and Michael T. Moore's motion for a nonsuit at the close of Plaintiff's case.

2. Did the Court of Appeals err in affirming the trial court's granting of the Plaintiff's Motion to Amend the Pleadings which violated the constitutional right to due process by adding Gerald S. Dixon and Michael T. Moore as Defendants in the lawsuit after the Plaintiff had concluded the presentation of its case, thus denying them the opportunity to present any defense and participate in the case.

STATEMENT OF THE CASE

Plaintiff filed suit on November 11, 2016 against Otis Morris, Jr., Pro Bowl Motors, Inc. and Tamika Worthy regarding the purchase of a vehicle on behalf of the Plaintiff when Defendant Morris, prior to such time, had allegedly sold the vehicle to Ms. Worthy. On February 1, 2017 Plaintiff amended the Complaint by adding additional defendants including Dixon Automotive, LLC (R. pp. 425-433). At no time prior to the end of Plaintiff's case at trial were Gerald S. Dixon and Michael T. Moore defendants in the case.

This matter came before the Honorable Joseph M. Strickland, Master of Equity for Richland County for a non-jury trial over the two days of February 8, 2018 and February 12, 2018. At the time of the hearing the remaining defendants in the matter

were Otis Morris, Jr., Pro Bowl Motors Inc. and Dixon Automotive, LLC. Defendant Dixon Automotive, LLC made a motion for Summary Judgment. The motion was denied at that time. (R. pp. 17-18).

At the close of Plaintiff's case Plaintiff moved to amend the pleadings by adding Gerald S. Dixon and Michael T. Moore as defendants. (R. pp. 322-335). Defendants objected and the issue was taken under advisement. Defendants Dixon Automotive, LLC and Gerald S. Dixon, and Michael T. Moore, if they were to be included as defendants, moved for a non-suit pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure at the close of Plaintiff's case (R. pp. 336-337) and it was taken under advisement. The Court issued its judgment in favor of the Plaintiff against all defendants, including Gerald S. Dixon and Michael T. Moore, both who the court added as parties in the same Order of Judgment on June 20, 2018. (R. pp. 1-16) All Defendants filed Motions for the Court to reconsider its ruling. A hearing was held on January 3, 2019 and all of Defendants' motions were denied.

The Court of Appeals affirmed the judgment of the Master in Equity, in part, and amended, in part, as to the amount of punitive damages awarded. *Mathes Auto Sales. Inc. v. Otis Morris, Jr., et al.*, No. 2022-UP-253 (S.C. Ct. App. filed June 8, 2022 and withdrawn, substituted, and refiled July 20, 2022). Petitioners seek a Writ of Certiorari to review that decision.

ARGUMENT

1. THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANTS DIXON AUTOMOTIVE, LLC'S, GERALD S. DIXON'S, AND MICHAEL T. MOORE'S MOTION FOR A NONSUIT AT THE CLOSE OF PLAINTIFF'S CASE

Mr. Morris' fraud on the Plaintiff is based upon his sale of the same car twice, first to Ms. Worthy, and then to the Plaintiff at the Darlington auto auction. There must be evidence that Dixon Automotive, LLC was aware of the previous sale to Ms. Worthy for it to have any connection to the fraud Mr. Morris perpetrated on the Plaintiff. The record is devoid of any evidence of such knowledge or actions on the part of Dixon Automotive, LLC.

Plaintiff's first witness Tamika Worthy was the purchaser of the car in May 2016. Her testimony was substantial regarding her dealings with Mr. Morris. However, she offered no evidence regarding Dixon Automotive, LLC. Following her testimony Plaintiff read from the testimony of Otis Morris, Jr. Mr. Morris was never called to the stand by the Plaintiff. The deposition offered no evidence against Dixon Automotive, LLC, regarding the matter before this Court.

Plaintiff then read portions of the deposition of Michael T. Moore. Mr. Moore, an owner of Dixon Automotive, LLC, discussed the purchase of the vehicle by Dixon Automotive, LLC from an auction in Florida via OVE. At the time he purchased it he stated that Mr. Morris indicated to him he may have a buyer for the vehicle. He further stated that subsequently Mr. Morris indicated that the buyer was unable to secure financing, which was later found to be a lie, and so Mr. Morris had the vehicle brought to

Dixon Automotive, LLC in York County, South Carolina where it stayed until the car was taken to Darlington when it was purchased on behalf of the Plaintiff by Mr. Morris. The car had been financed by Dixon Automotive, LLC by way of its floorplan with Nextgear, Inc. At the time the car was sold in Darlington and the sale confirmed, Nextgear, Inc. applied the sales proceeds to the account of Dixon Automotive, LLC. Lastly, Mr. Moore stated that no one at Dixon Automotive, LLC knew of the previous sale by Morris to Worthy until October 2016, two months after the sale to Plaintiff. Additionally, because of this Dixon Automotive, LLC had its floor plan of $250,000.00 shut down. No evidence was offered by Plaintiff to dispute this.

Plaintiff then called Donald Dease of Capitol City Rides of Columbia, South Carolina. Mr. Dease testified about his business history with Mr. Morris but offered no evidence regarding Dixon Automotive, LLC.

Following Mr. Dease's testimony, Plaintiff read portions of the deposition of Mr. Dixon which showed that he was the owner of Dixon Automotive, LLC; that he knew little, if anything about the transaction involved in this matter, and that he is retired as a player from the National Football League. As was read into the record from his deposition, Plaintiff's attorney characterized Mr. Dixon's lack of knowledge as "You don't know nothin' 'bout birthing any babies." Mitchell, Margaret, Gone with the Wind, (1936).

Plaintiff then called Investigator Chauncey Duckett of the Columbia Police Department. Investigator Duckett indicated he investigated the transaction between Mr. Morris and Ms. Worthy but pursued no criminal action. He offered no testimony regarding Dixon Automotive, LLC, Mr. Dixon, or Mr. Moore.

The last witness was the Plaintiff. His testimony centered around the transaction wherein Mr. Morris purchased the car for his dealership in Florence, South Carolina; his conversation with Mr. Morris; the car being purchased with proceeds from his floorplan, Nextgear, Inc., being the same floorplan as used by Dixon Automotive, LLC; and finally, his alleged damages arising from Mr. Morris' actions in the sale to Ms. Worthy.

Additionally, the documentary evidence entered by Plaintiff were either records not regarding this matter, or records which confirmed the sales that were performed. However, none of it in any way linked Dixon Automotive, LLC, Mr. Dixon, or Mr. Moore to the wrongdoing perpetrated by Mr. Morris.

In the case *Collins Entertainment, Inc. v. White*, the South Carolina Supreme Court ruled that when the record is devoid of evidence whereby the [factfinder] would have to speculate or conject to reach a decision, then a direct verdict should be granted. 611 S.E.2d 262, 363 S.C. 546 (S.C. 2005).

For the Court to find any connection between Mr. Morris' wrongdoing in this case and Dixon Automotive, LLC, it must be based on more than mere speculation and conjecture of theories propounded by the Plaintiff. The Order of Judgment in this matter contains more than 120 findings of fact by the Court. None of the findings of fact show that Dixon Automotive, LLC, Mr. Dixon, or Mr. Moore knew of the transaction Mr. Morris had with Ms. Worthy.

2. THE TRIAL COURT ERRED, AND VIOLATED DIXON'S AND MOORE'S CONSTITUTIONAL RIGHT TO DUE PROCESS, IN GRANTING PLAINTIFF'S MOTION TO AMEND THE PLEADINGS BY ADDING GERALD S. DIXON AND MICHAEL T. MOORE AS INDIVIDUAL DEFENDANTS AFTER PLAINTIFF RESTED.

Rule 15(c), SCRCivP provides, "An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by the amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for mistake concerning the identity of the proper party, the action would have been brought against him." Thus, there are two requirements that must be met before the Court is to add a party.

The first is whether the party had sufficient notice so that he would not be prejudiced in maintaining his defense on the merits. Mr. Dixon and Mr. Moore were aware that an action had been brought against Dixon Automotive, LLC regarding the sale of a vehicle at the time the company was served with the Complaint in the fall of 2016. Yet at the time and throughout the proceedings, and despite the fact that Plaintiff's attorney had included Mr. Morris as an individual defendant, there was no indication that Plaintiff would attempt to involve them in their individual capacities. Up until the time of Plaintiff's motion to amend following the closing of Plaintiff's case, both were merely treated as witnesses in the matter. Neither of them had legal counsel. Neither of them participated, nor had the opportunity to participate in the suit, nor in the final hearing on the merits of Plaintiff's case.

The Court of Appeals cited *Collins Ent. Inc. v. White 363* S.C. 546, 611 S.E.2d 262 (S.C. Ct. App. 2005) for the law that it is in the sound discretion of the Court as to whether the pleadings should be amended. It further stated that the party opposing the motion must show prejudice. The irony here is that in the *Collins* matter, the Court ruled that there was prejudice and didn't allow the amendment to be made. The Court stated that the prejudice that Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it.

Mr. Dixon and Mr. Moore had no notice. Mr. Dixon and Mr. Moore had no opportunity. There was extreme prejudice to Mr. Dixon and Mr. Moore for at the time they were given notice of being added as individual defendants, the trial had ended. At the same time they were given notice that they were now issued a six figure judgment against each of them. And until that time, neither of them had been in the case. Thus, at the time they were given notice they were now defendants subject to the judgment:

1. They had no opportunity to demand their constitutional right to have the matter heard by a jury of their peers (7th Amendment, United States Constitution);
2. They had no opportunity to consult with and retain their own attorneys to defend them individually against the allegations which were leveled against them at the end. (5th Amendment, United States Constitution; Section 3, South Carolina Constitution);
3. They had no opportunity to demand that they be sued in their home county of York County where they may have been known to a jury panel, especially due to Mr. Dixon having played for the National Football League for several years.

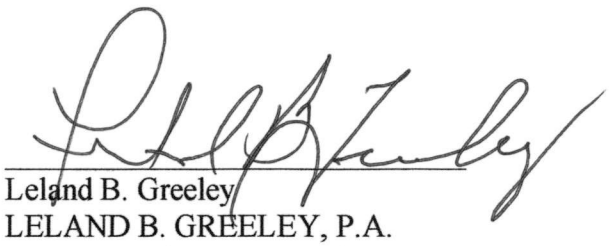
4. They had no opportunity to due process for they were not parties to the action and thus lacked standing to participate in the matter at all but were only included at the time the Court assigned blame and judgment. (Section 3, South Carolina Constitution).

Thus, it is respectfully submitted that the prejudice existing in this matter caused by the Master allowing the amendment to the Complaint in adding Mr. Dixon and Mr. Moore as individual defendants is clear. If this Court found prejudice in *Collins* due to the lack of notice and opportunity to adequately address an added single affirmative defense, then the existence of prejudice in this case where an individual is made a party to the action and handed a judgment with no notice or opportunity to address and defend it in any way is unquestionable.

CONCLUSION

For the reasons stated, Petitioner ask the Court to grant the petition for a writ of certiorari.

Respectfully submitted,



Leland B. Greeley
LELAND B. GREELEY, P.A.
130 East Main Street, Ste 202
Post Office Box 2981
Rock Hill, South Carolina 29732
(803)329-0088 S.C. Bar # 7850
Attorney for Petitioners Dixon Automotive, LLC
Gerald S. Dixon, and Michael T. Moore.

Rock Hill, South Carolina.

August 18, 2022.