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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 29 2013
SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson Master in Equity Court Judge

Case No. 2011-CP-08-2804

Sonia Beatriz Guiterrez,

Respondent,

v.

Greg S. Sarver, Appellant.

NOTICE OF APPEAL

Greg S. Sarver appeals the judgment of the Honorable Robert E. Watson dated May 13, 2013. Appellant received written notice of entry of this judgment on May 18th, 2013.

May 29, 2013

Greg S. Sarver
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Pro Se Appellant

Other Counsel of Record:
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PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
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Greg S. Sarver,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Sonia Beatriz Guiterrez, by depositing a copy of it in the United States Mail, postage prepaid, on May 29, 2013, addressed to her attorney of record, Rhett Klok 1002 Anna Knapp Blvd., Suite 103, Mt. Pleasant, SC 29464 [by personally delivering a copy of it to his attorney of record, on May 29, 2013.

May 29, 2013

Greg S. Sarver
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Pro se Appellant

STATE OF SOUTH CAROLINA)	IN THE COURT OF MASTER IN EQUITY 2011-CP-08-02804
)	NINTH JUDICIAL DISTRICT CIVIL ACTION NUMBER
COUNTY OF BERKELEY)	
Sonja Beatrice Gutierrez)	
Plaintiff)	
)	
Vs.)	**APPEAL**
)	
)	
Greg S. Sarver)	
)	
)	
Defendant)	
)	

Defendant wishes to appeal the decision of the Honorable Master in Equity for Berkeley County based on the following reasons:

1. The Defendant buys hundreds of tax liens and when the defaulting tax payer doesn't pay the taxes the Defendant is enriched because that is what the law provides for. There is no incentive other than profit for anyone to bid on and pay the taxes for a defaulting taxpayer other than enrichment. The question for the Judge was whether it was unjust or not. I believe the Judge erred in his interpretation of the law in this matter. Although the Defendant was enriched, the 3rd part of the law pertaining to "unjust" was ignored.

2. The Plaintiffs position was that the Defendant knew repairs were being made. The Judge ignored the defendant and said "I don't care" when presented with testimony by the defendant that it is virtually impossible to police the activity of hundreds of taxpayers during the 12 month redemption period, and even if it was, the tax lien holder has no interest in any property until a bill of sale is issued.

3. The Judge IGNORED the sworn testimony of the Plaintiff herself; who stated that she was well aware of the fact that the Defendant was trying to contact her months before he posted the for sale sign on the property as refered to in Final Order finding number 7. Plaintiff gave testimony that she knew someone was trying to contact her about the trailer but thought it was some type of scam so she never returned his phone calls or messages that he left for her.

4. Once a DMV title was issued to the Defendant he, without delay, attempted to contact the Plaintiff, who ignore him and continued to work on the trailer.

5. Defendant believes that the Judge discriminated against the Defendant and for the Plaintiff because the Plaintiff is a poor non English speaking Hispanic from Peru and the Defendant is a wealthy investor.

6. The Judge inappropriately allowed the Plaintiff to spend a huge amount of time at the beginning of the trial and go on and on explaining where she was from in a village in

Peru and her customs and beliefs and how the law worked pertaining to things in Peru. This was the Plaintiff's defense for not obeying the several laws that she broke in America, that lead to her trailer being Seized by Berkeley County.

7. The Defendant currently has a lawsuit pending against Berkeley County and The Delinquent Tax collector of Berkeley County case 2012 cp- 08-00406 and the Defendant is well known to the Master in Equity through his many participation in many monthly Masters foreclosure auctions.

8. The Judge had the Plaintiff's lawyer write the Final Order and was allowed to write in comments such as Findings #8; the fact that Sunday May 8th was Mothers day, which only proves bias and has nothing to do with the law.

9. The Judge gave the Plaintiffs lawyer an extra day past the day he ordered the Post Trial Briefs turned in, allowing the Plaintiffs lawyer to use tactics to review Defendants brief and then write his brief later; thus giving special favor to the Plaintiff through her lawyer. Please see post trial briefs.

10 Defendant understands that in todays society popular opinion is that banks and lenders and investors are demonized and homeowners are seen as innocent victims, and there are hot lines set up and billboards all over town suggesting such. But even so, the bank or lender or investor still deserves a fair and unbiased trial.

11. Although the case concerns chattel and not real estate, the Plaintiff's lawyer made a motion to be seen before Judge Watson instead of another judge. Defendant objected but this case was transferred anyway.

These are the reasons that the Defendant believes he did not get a FAIR trial in Berkeley County by the Honorable Master in Equity and hereby appeals this case and requests that the Honorable Judge for the Court of Appeals overturns the ruling of the lower court and rules in favor of the Defendant. Please refer to attached post trial brief for legal references and arguments.

By: Greg S. Sarver
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May 29, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY) CASE NO.: 2011-CP-08-2804

SONIA BEATRIZ GUITERREZ,

Plaintiff,

v.

GREG S. SARVER, individually and DONOVAN SCOTT WHOLESALE AUTO, LLC,

Defendants.

POST-TRIAL BRIEF OF DEFENDANT GREG S. SARVER

FILED
2013 FEB 18 PM 2:03
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY SC

Plaintiff Sonia Beatriz Guiterrez filed the instant action seeking compensation in *quantum meruit* for work performed in the renovation of a mobile home owned by Defendant Greg Sarver.[1] Specifically, Plaintiff alleges that she purchased a mobile home and made extensive improvements, only to discover that she had no true ownership interest in the property. She asserts that, as a result of his failure to stop her from investing money into the mobile home, Defendant is obligated to pay the fair market value of her work. Following a trial on the merits, at which Plaintiff was represented by counsel and Defendant appeared *pro se*, the Court indicated that it was inclined to rule in Plaintiff's favor. The Court did, however, request that the parties provide Post-Trial Memoranda. Defendant would, therefore, respectfully submit the following reasons why the Court should reconsider its tentative decision, and rule in Defendant's favor. In the alternative, the Court should reduce the damages awarded to Plaintiff, and hold a hearing on the issue of mitigation as well as the additional expenses Defendant has incurred as a result of Plaintiff's interference with the condition of Plaintiff's property.

[1] Defendant Donovan Scott Wholesale Auto, LLC was determined to have no interest in this action and has been dismissed.

The property that forms the genesis of this action is a mobile home, presently located at a trailer park in Summerville. On or about December 4, 2010, Plaintiff – along with another individual whose name is listed as being part of the transaction, and who is referred to in Plaintiff's complaint as being her husband and co-purchaser, but who for unknown reasons declined to be a party to this action – purchased the mobile home for the sum of $1,500.[2] The hand-written "bill of sale" purports to have been executed by the owner, one Ryan Hankel. It is undisputed that Mr. Hankel's signature was forged, and that the individuals who were then tenants in the mobile home, Tammi and Chuck Haselden, executed this document and purported to convey title. It is believed that the Haseldens held the title because they were renting-to-purchase from Hankel; there is no question but that their purchase had not been completed, that they had no actual right to convey the property to a third party, and that Hankel knew nothing about this transaction.

Following the ostensible purchase of the mobile home, Plaintiff transferred the title through the South Carolina DMV, and paid the state tax. In violation of Section 35-14 of the Berkeley County Code of Ordinances, no registration decal was obtained. Plaintiff testified that she, with the help of a cousin and possibly others, began working on the property immediately after its purchase, and there is no doubt but that the interior was gutted and significant renovations commenced.

Defendant purchased the same property at a regularly-held Berkeley County Tax Sale in February, 2010. Because of the statutorily-mandated one-year redemption period, Defendant could not obtain title to the property until the spring of 2011. For the same reason, and following

[2] A cursory search of the internet reveals that the fair market value of a 1985 Skyline mobile home, in fair condition, ranges from $7,500 to $10,500. Because of the work done on the chattel by Plaintiff, and the condition in which it was left when finally recovered by Defendant, it is impossible to determine what the condition was at the time Plaintiff first encountered it. Plaintiff presented no photographs or other objective indicia of its pre-renovation condition.

specific directions provided by the Tax Commissioner in conjunction with Tax Sales, Defendant was unable to physically enter the premises until the same time.[3] In practical terms, as was made apparent at trial, this meant that although Defendant was aware that the mobile home was occupied and that there was some work of some kind being done, he knew neither the identity of the occupant nor the extent of the work. He drove by the property twice. He had no contact with any resident nor could he conduct any inspections. In fact, Defendant had no reason to or basis for making any objection to the work, and had only a potential interest in the ownership of the mobile home itself. Defendant could reasonably have believed that the original owner intended to redeem his property and buy back the tax lien; he could equally reasonably have believed that the work being done was thieves or vandals stripping the home of any salvageable materials. In neither case could Defendant have stopped what was being done. Until the end of the redemption period, he simply had no ability to enter upon the property.

The back taxes due were not paid, and Berkeley County issued Defendant title to the mobile home in March, 2011. He registered the mobile home with both the State and the County, and contacted Plaintiff to inform her that he was the true owner of the chattel. The ensuing unpleasantness, which eventually resulted in Defendant having to seek judicial intervention to remove Plaintiff from the property, are actually immaterial to the instant action. It is noteworthy, however, that Plaintiff only sought to obtain the necessary County registration after being contacted by Defendant, and that no attempts of any kind had been made to verify either ownership or tax status of the property with the County prior to April 20, 2011.

[3] Although the parties have, throughout this litigation, spoken in terms of Defendant having purchased the property at tax sale, in legal terms it is more accurate to say that Defendant purchased the lien, and the right to potential ownership, from the County. Until the end of the redemption period, Defendant has no true interest in or right to the physical property, which remains in the legal and physical possession of the original owner. Defendant could not have entered the premises, or asked Plaintiff to cease work, as the mobile home did not belong to him.

Plaintiff eventually paid Defendant rent for one month, and moved from the property. She filed her complaint in this action shortly thereafter, seeking reimbursement for all of the money she claims to have put into renovating a property she discovered she did not own. The original claim of actual damages in the amount of $9,492.02 was reduced at trial when it was determined that even though included as elements of damages in her complaint, Plaintiff had removed the stove and refrigerator. As noted, Plaintiff's sole theory of recovery is equitable, and her complaint is filed on grounds of unjust enrichment and *quantum meruit*.

It is axiomatic that one seeking to recover in equity must act equitably, and that the doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. *Id.*

In addition, it is equally axiomatic that a party cannot intentionally neglect to take measures to safeguard himself, and then attempt to recover from another for damages that could have, through the exercise of ordinary care, been avoided. In South Carolina, which as adopted the doctrine of comparative negligence, a party found to be at least 50% responsible for its own injuries cannot recover. *See, e.g., Bloom v. Ravoira,* 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000); *Bass v. Gopal, Inc.*, 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009).

In this instance, the failure of Plaintiff to verify, in any respect, the ownership of the mobile home demonstrates her complete failure to protect her interests. At no time did she check to see if the party claiming to sell her the property was, in fact, actually the owner, something that could have been accomplished by doing nothing more than checking identification. Plaintiff's failure to obtain the necessary county registration not only violated county ordinances, but ensure that she would not be made aware of the fact that the owner's interest in the mobile home had already been sold at tax sale; had she taken this simple step at the time of her "purchase," rather than complying with the ordinance only after Defendant asked her to leave his property, she would have realized long before she started the construction process that the property upon which she was performing repairs belonged to another.

Although not addressed specifically during the course of the trial of this matter, Plaintiff's status, and her ability to recover damages, rest upon a conclusion that she is a buyer in due course of the mobile home – in other words, that she had no reason to suspect that the seller did not have the full right and authority to sell the property, as well as a finding that she paid fair market value for it. Only if she is a buyer in due course can she recover, in equity, and on the grounds that she had no reason to suspect that she did not own the property she was renovating. Under the facts as they were presented, it is clear that she knew or should have known from the outset that the sale to her was not a legitimate transaction.

A purchaser cannot be an innocent buyer in due course where the transaction itself demonstrates that he was, at the very least, on notice of possible defects in the transaction. *Commercial Security v. Donald Drug Co.*, 115 S.C. 48, 104 S.E. 312 (1920). This is, in essence, the "holder in due course" doctrine, which provides that a "holder in due course" is a person who is a holder of a negotiable instrument, who took it for value, in good faith, without notice that it

is overdue or has been dishonored or of any defense against or claim to it on the part of any person. *Bank of Fort Mill v. Rollins*, 217 S.C. 464, 61 S.E.2d 41 (1950); *First National Bank of Rock Island v. Anderson,* 32 S.C. 538, 11 S.E. 379 (1980).

Plaintiff herein did not take for value, and, by extension, could not have taken in good faith. As noted above, the reasonable value of the mobile home is far in excess of the $1,500 Plaintiff paid; the cost of moving a mobile home exceeds that amount, and it is difficult if not impossible to comprehend that any reasonable purchaser would not have realized that the transaction itself was not legitimate. A reasonable person in the position of Plaintiff would have known that the purchase was suspect, and would have taken affirmative steps – such as verifying the identity of the seller and checking, through registration, with the County, to ensure that she actually owned the property. Plaintiff's actions in buying from an unknown person, for considerably less than market value, and failing to comply with ordinances requiring registration – ordinances that incidentally would have demonstrated immediately that she could not purchase the mobile home in the manner she did – bar her recovery.

Plaintiff did attempt to address her failure to verify the right of her "seller" to transfer title, and her failure to obtain the necessary County registrations, by focusing at the outset of the trial on the fact that she was originally from Peru, and that transactions of this nature were handled in a different manner in her native country. Defendant is not in a position to address business dealings in other countries. However, although Plaintiff may be quite legitimately unsophisticated in ordinary business dealings in South Carolina, that should not excuse her intentional blindness to the realities of this particular transaction, or of the requirements of local laws.

The testimony at trial demonstrated that Plaintiff did not purchase this mobile home alone, but in conjunction with her American husband, Sebastian Middleton. Mr. Middleton's name appears on all of the paperwork, including the original title issued to Plaintiff. It is quite possible that Mr. Middleton declined to participate as a Plaintiff in this action precisely because any claims of failures to investigate or register would be significantly less effective with his presence in the case. He would not be able to assert, as did Plaintiff herself, that things are done differently in her culture.

To the extent that Plaintiff has, in essence, manufactured damages by failing to exercise the ordinary care of a prudent person in purchasing property from an unknown source and then entering upon a plan to completely gut and remodel that property, without ever taking prudent measures to verify ownership, she should not be permitted, in equity, to recover from Defendant. Defendant could not have protected himself in any manner from Plaintiff's actions. He was barred from entering upon the property, which he did not own. He knew he would not receive full ownership – and the title – to the mobile home until the full redemption period had elapsed. He could neither take possession of the mobile home nor act to eject Plaintiff, let alone order her to cease tearing apart the chattel to which he had yet to obtain title.

As a result of the operation law, the earlier ejection action in the Magistrate's Court in *Sarver v. Middleton*, Case No. 2011CV0810602380, it has been determined that Plaintiff herein was a tenant in Defendant's mobile home. She was ordered to, and did, pay rent in order to occupy the property at issue in this action. A tenant makes improvements to the rented property solely at the tenant's own risk. Although it is not specifically addressed by the Residential Landlord-Tenant Act, S.C. § 27-40-10 et seq., work voluntarily done by a tenant on a landlord's premises is not compensable except when performed with the permission and authority of the

landlord. *F&D Elec. Contrs., Inc. v. Powder Coaters, Inc.* 350 S.C. 454, 567 S.E.2d 842 (2002)(mechanic's lien statute did not impose liability on landlord for expensive electrical upgrade done for tenant in the absence of any evidence that landlord affirmatively consented to the work). Plaintiff, who was merely a tenant, could not authorize work to be done on her landlord's property absent Defendant's consent to that work; she should not now be permitted to recover damages for the same unauthorized expense, which she incurred entirely at her own risk.

Finally, even if the Court were to determine that Plaintiff is entitled to compensation for having performed work on property owned Defendant, there remain significant questions as to the justifiable amount of that award. There is no objective evidence to support Plaintiff's assertion that the mobile home was only worth the minimal amount she paid for it, or that it needed to be completely gutted and rebuilt. In addition, the value to Defendant of the "improvements" made by Plaintiff is questionable. Even if the Court should find that Plaintiff reasonable believed that she owned the mobile home, Defendant would request that an additional hearing be set on the matter of damages.

Regardless of the amount expended by Plaintiff, she is entitled to recover only the increase in the value of the property to Defendant. *See Barrett v. Miller*, 283 S.C. 262, 321 S.E.2d 198 (Ct. App. 1984). Although Plaintiff appears to have incorporated several unnecessarily expensive materials – hardwood floors, plumbing and lighting fixtures – into the mobile home, she also reduced it from a three-bedroom to a two-bedroom residence, thereby reducing its rental value. Furthermore, many of the renovations commenced by Plaintiff were left unfinished. Although Defendant has no idea whether those renovations were actually necessary, and may not have found he had to undertake them had he taken possession of the property in an unchanged form, he did have to spend an additional $2,500 in completing areas of

the home that were incomplete. Finally, even if Plaintiff is found to have reasonably performed renovations, and even if the initial value of the mobile home was only $1,500 – something impossible to prove at this late date – her costs of $9,490, plus Defendant's costs of $2,500 to complete, have now taken this mobile home to a value well in excess of the normal for a 1985 Skyline.

Although the value of the mobile home at the outset – at the time Plaintiff purchased it for the abnormally low sum of $1,500 – is impossible to prove, there is some evidence as to both its condition, and consequently, its value, at that time, as well as of the ultimate benefit to Defendant. Of note with respect to the initial value of the property is the simple fact that the individuals purporting to sell it to Plaintiff were actually living in the mobile home at the time of the transaction. It is difficult, if not impossible, to imagine that anyone continue to make their home in a trailer that is in the condition Plaintiff claims it to have been at the time she paid the tenants for it. In addition, there was testimony at trial that Defendant ultimately sold it, as part of a package deal, for a price in the neighborhood of $8,000. Even if the $1,500 purchase price is accurate and properly reflects the value at the time of Plaintiff's purchase, added to the additional $2,500 Defendant spent in completing the work, the total increase in value of Plaintiff's work is not more than $4,000. This is, of course, less than half of what Plaintiff is now demanding.

The theory of unjust enrichment looks not to the expense to the plaintiff but to the increase in value to the defendant. In this case, although it is impossible to establish that increase definitively, due to an utter lack of evidence as to the value at the commencement of the work, it is possible to definitively determine that the increase is considerably less than the cost of Plaintiff's materials.

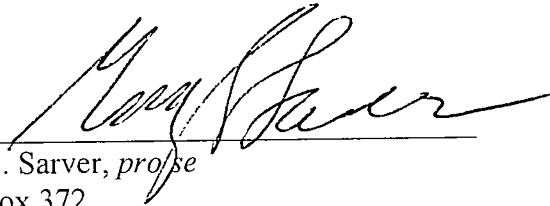
In addition, Plaintiff seeks to have this Court award her for expenses incurred long after she knew or should have known that she had no ownership interest in the mobile home. Defendant testified that, although he would have been trespassing on the property had he attempted to enter prior to the expiration of the one-year redemption period, and he did not try to contact Plaintiff during that period because he had yet to receive an ownership interest in the mobile home, once he received the title he immediately reached out to Plaintiff. Plaintiff admitted, in her testimony, that she received letters and notice from Defendant, commencing long before she was finished with the on-going work. In fact, Defendant began to try to reach her to discuss the ownership of the mobile home, and her continued presence therein, during March, 2011. Plaintiff testified that she ignored these notices, including discussions with management at the mobile home park asking her to call Defendant, because she was afraid that he was a "scammer." According to Plaintiff's own evidence (*see* Ex. 4 to Plaintiff's Complaint), at least $5,059.05 of the materials cost for which she has filed this action is expense that was incurred after Defendant began trying to talk to her about the fact that she was occupying property owned by him.

Plaintiff's expenses are excessive, even if the performance of the work itself is found to have been reasonable. Many of those expenses were incurred at a time when she knew that she had no right to make alterations to the property of another. When sitting in equity, the Court should consider the equity of the actions of the parties: in this instance, it is clear that Plaintiff intentionally closed her eyes to the questionable character of the underlying transaction, and affirmatively ignored information that would have indicated to a reasonable person that she was spending money improving property she did not own. Furthermore, equitable considerations also factor into the amount of any eventual award.. Since Plaintiff brought this action in equity,

seeking damages in *quantum meruit*, she is entitled only to the increase in value to Defendant, not to her out-of-pocket costs. Should the Court find that Plaintiff is entitled to some compensation, Defendant would request that the Court take further evidence on the issue of the amount to which Plaintiff might be entitled.

Defendant would respectfully request that the Court find that Plaintiff's actions in performing renovations on a mobile home she knew or should have know she did not own were not reasonable, and that he is not required to compensate her in any manner for this work. In the alternative, Defendant would respectfully request that the Court conduct an additional hearing, and take additional testimony, with respect to the value to Defendant of the renovations.

Respectfully submitted,



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Feb 18th, 2013
Ladson, SC