

Record/FILE ON DEMAND

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THE REPUBLIC STATE OF South Carolina
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

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SC Court of Appeals

Wilmington Savings Fund Society FSB as Trustee of Stanwich Mortgage Loan Trust C, Respondent,

v,

Nelson L, Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp., South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of whom Nelson L, Bruce is the Appellant, _____

APPELLANT'S FINAL RESPONSE TO RESPONDENTS INITIAL BRIEF

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina [29483]
(843) 437-7901
Appellant

January 26th, 2022

INTRODUCTION

Comes now appellant with his reply to respondent's initial brief which was served on him through the mail on August 18, 2021 which is the date I received this filing.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "I"

Response/Objection to sections "b - c"

Respondent alleged that appellant abandoned his argument that, "he should not have to pay filing fees until the county provided him proof of where the fees are being allocated (Transcript., R. pp. 58, at ll., 14-18) because In his brief Appellant argues instead he should be allowed to proceed without paying filing fees under the theory he has filed sufficient documents to evidence his indigent status. Appellant objects for the reasons specified in his "OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL (section IV "R. pp. 615-616") and appellant's initial brief (section "V"). Appellant also has not abandoned this argument because the first line in his brief, section "V" clearly evidences that the argument raised in the March 12, 2020 hearing has been preserved for appellate review by stating, "The filing fee was challenged by appellant which the court never produced on the record, any facts to support their claims in opposition to appellant's challenge to the fee which is an undisputed fact. The lower court also did not allow appellant the opportunity to produce evidence to support his claims and authority for his argument. Appellant received evidence directly from the South Carolina Supreme Court which stated specifically which fund Diane S. Goodstein office is funded by the states appropriated fund (see...defendants motion to reconsider R. pp. 531) to cover all operations of the court in advance every year which is why appellant challenged where these filing fees are being allocated to since the court is already pre-paid in advance by tax payers dollars (Transcript., R. pp. 58 at 6-25, R. pp. 59 at 1-17) which is estimated and paid out to the court

from state citizens and estimated financials every year through the “South Carolina Department of Administration Budget Department” through the states appropriated fund to Diane’s office by the office and budget department (see...defendants motion to reconsider R. pp. 531). By asking for an additional \$25 is a double tax issue (see...defendants motion to reconsider R. pp. 531). The lower court also documented that this argument is preserved for appellate review (Transcript., R. pp. 616 at 5-22). It also looks like the court reporter did not document word for word what the appellant stated at the hearing as there are incomplete section of the transcript documenting the responses at the hearing labeled as “---“ as the court reported failed to document that Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen’s Compensation Laws of this state. *Right and justice shall be administered without sale, denial, or delay. Ramsbacher v. Jim Palmer Trucking 391 Mont. 298 (Mont. 2018)*. Also see...Trankel v. State 282 Mont. 348 (Mont. 1997), State ex Rel. Mont. Citizens v. Waltermire 224 Mont. 273 (Mont. 1986) and *St. ex Rel. Mt. Citizens v. Waltermire 227 Mont. 85 (Mont. 1987)*.

APPELLANT’S RESPONSE TO RESPONDENTS ARGUMENT SECTION “II”

Response/Objection to sections “a”

It is unclear what the respondent’s arguments are in this section. It appears that respondent is arguing that ‘Viewing the evidence in favor of the [non-moving party], the motion must be granted if facts alleged in the complaint and inferences reasonably deductible therefrom do not entitle the plaintiff to relief, that “the well settled rule is that facts, and not legal

conclusions, must be stated in pleadings,” and that “in reviewing the pleadings the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.”” Appellant objects for the reasons specified in his motion to reconsider R. pp. 532-534, his opposition to plaintiff’s motion to dismiss and order of reference R. pp. 394-397 paragraphs 1 and 3, Appellants opposition to respondents motion to dismiss appeal R. pp. 605-606, 609, 615-616 and Appellant initial brief section “VI” which are hereby reiterated and incorporated by reference in their entirety as appellant’s amended counterclaim came in the affidavit form which is prima facie evidence, are considered facts before the court to support his claims as there are no rebuttal affidavits filed on the record in this case. “Prima facie evidence of fact is in law sufficient to establish the fact, unless rebutted” *Mack v. Post Exchange* 207 S.C. 258 (S.C. 1945).

The grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action cannot be upheld if facts alleged in the complaint and inferences reasonably deducible therefrom, if proven, would entitle the plaintiff to relief on any theory of the case. *State v. Adkison* 213 S.E.2d 591 (S.C. 1975) Quoting. *Newton v. South Carolina Public Railways Comm'n*, 319 S.C. 430, 462 S.E.2d 266 (1995); *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). “The trial court and this [C]ourt on appeal must presume all well pled facts to be true.” *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App. 1988). “[A] judgment on the pleadings is considered to be a drastic procedure by our courts.” *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted).

The law requires that an affidavit in attachment, in order to withstand the attack of irregularity, must contain an allegation of facts from which the inference sought may be drawn, and, if made upon information and belief, the source of such information (*Witherspoon Co. v.*

Bell 132 S.C. 303 (S.C. 1925).

Response/Objection to sections "b"

Respondent believes that appellant is arguing for the first time on appeal the arguments stated in his initial brief (Appellant's Initial Brief, Pp. 13-18, 29-34) and that he is changing his entire position on appeal (Respondent initial brief, pg. 14). Appellant object for the reasons stated in his opposition to respondent's motion to dismiss appeal section II R. pp. 611-614, and appellant's initial brief sections "I" and "XII" which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "c"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal section II R. pp. 611-614, and appellants initial brief sections "I" and "XII" which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "d"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "I" and "II" R. pp. 393-404, which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "e"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "III", which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "f"

Appellant objects to this section of the Respondents initial brief for the reasons stated in

appellant's initial brief section "III" pgs. 19-21, which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "g"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "IX" pg. 27, which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "h"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "VI" and his opposition to respondent's motion to dismiss appeal section I, R. pp. 609-611, which are hereby reiterated and incorporated by reference in their entirety.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "III"

Response/Objection to sections "a" and "b"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's motion to reconsider R. pp. 558 and appellant's opposition to plaintiff's motion to dismiss and order of reference paragraph 1, R. pp. 396 which clearly and specifically addresses the respondents motion to dismiss and order of reference which are hereby reiterated and incorporated by reference in their entirety as appellant clearly stated that, "Defendant hereby explicitly reserves and retains the right to amend his amended countersuit with leave of court and hereby exercises that right with the filing of this opposition as there is new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended countersuit." This is clearly a request of the court for leave to amend his amended counterclaim/countersuit that had been raised before the court in the properly filed motions

referenced above therefore there is a ruling to be appealed that has been preserved for appellate review and not waived by the appellant.

Response/Objection to sections "c"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's motion to reconsider R. pp. 396 and appellants initial brief section "II" which are hereby reiterated and incorporated by reference in their entirety. Even if appellant was to be held to the same standards as an attorney, the record clearly shows appellant requested leave of court to amend his amended counterclaim/countersuit (see...appellant's motion to reconsider R. pp. 558 and appellant's opposition to plaintiff's motion to dismiss and order of reference paragraph 1, R. pp. 396) and therefore the issue is preserved for appellate review.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "IV"

Response/Objection to sections "a", "b", and "c"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "I" R. pp. 605-611 which is hereby reiterated and incorporated by reference in its entirety. Appellant also hereby corrects the statement in his opposition to respondent's motion to dismiss appeal which stated that, "This would include the appellants 12-17-2018 amended counterclaim which clearly specified as an Affidavit and is in Affidavit form", the amended counterclaim date to which appellant was referring to was 9-25-2017 R. pp. 35-46 not 12-17-2018. Appellant even directed the court to review the record at the hearing (see...Transcript., R. pp. 65 at 23-25., R. pp. 66 at 1-10) which if the court had properly review the record, the court would have seen that appellant demanded a jury trial/trial by jury and therefore this issue is preserved for appellate review as the record documents a demand from the appellant for a jury trial/trial by jury since the initiation of his

counterclaims/countersuit and therefore are not waived as they have been properly before the court and already acknowledged by the court as evidenced by the clerk changing the status from non-jury to jury as referenced above R. pp. 188 in the opposition of the appellant to the respondent's motion to dismiss appeal R. pp. 608.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "V"

Response/Objection to sections "a", "b", "c", and "d"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "III" R. pp. 614, appellant's motion to reconsider paragraph 9 R. pp. 548, and appellant's initial brief section "XI" which are hereby reiterated and incorporated by reference in their entirety and therefore is preserved for appellate review. These issues are not abandoned nor waived. Appellant has not voluntarily submitted to personal jurisdiction by appearing, even if he did, the court still has not proven it had subject matter jurisdiction or otherwise to make a ruling on his amended counterclaim/countersuit. Because the issue has been raised to the trial court as evidenced by the record, they are preserved for appellate review.

CONCLUSION

For the reasons specified above, Appellant has preserved all issues presented for appellate review, and the appeals court should review and grant the appellant the relief requested in his Initial Appeal Brief. The trial court's order dismissing Appellant's Counterclaims and referring the matter to the Master should be denied and reversed. Done this 26th day of **January, 2022.**

RESPECTFULLY PRESENTED,

“Without Prejudice”

Nelson L. Bruce 1-26-2022

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

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U.C.C. 1-207/1-308, 1.103.6

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