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Nov 14 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

Bentley D. Price, Circuit Court Judge

Consolidated Appellate Case No.: 2020-000607

Larry RahnRespondent,

-v-

Barbara SmithAppellant.

RESPONDENT’S REPLY IN FURTHER SUPPORT OF MOTION TO
DISMISS APPEAL

Pursuant to Rule 240, SCACR, Respondent Larry Rahn respectfully submits this Reply Brief in further support of his Motion to Dismiss. Initially, Respondent would note that he does not offer further arguments in support of his Motion, as the exhibits and record speak for themselves as to whether Appellant preserved her arguments as to mootness and equitable tolling at the earliest possible instances when these issues presented themselves on either of the appealed Orders.

Respondent only reiterates that the issues of mootness and equitable tolling were actually before the Circuit Court on Judge Buckner's original Order extending the time for performance of the contract at issue; regardless of whether the parties or the Circuit Court addressed the legal doctrines by name, the Circuit Court would have necessarily had to entertain whether the issue of specific performance was moot, as according to Respondent the time for performing under the agreement had passed, and the Circuit Court would have necessarily had to entertain whether equitable tolling would permit the Circuit Court to extend the time for performing under the contract. Appellant initially argued to the Circuit Court that the agreement had expired before Respondent had ever initiated his lawsuit. Respondent's Motion to Dismiss only asserts that when Appellant chose not to raise or oppose their potential applicability to the issues as to the Circuit Court's first Order, it violated issue preservation rules for the Appellant to raise the issues in a collateral attack under Rule 60, SCRPC.

Second, as to Respondent's arguments concerning whether the contract contained a condition precedent, and whether Respondent was ready, willing, and able to perform, Appellant has relied on an unfiled Memorandum in Opposition to Summary Judgment, attached to her Return as Appellant's Exhibit 1, that is not part of the record of materials filed with the Circuit Court to Respondent's best knowledge. This material is not properly before the Court, was not filed with the Circuit Court, and has been improperly designated by Appellant for inclusion in the Record on Appeal. Since this document was not properly included in the record

before the Circuit Court, neither Appellant nor Respondent should be permitted to rely on its contents, and it should be struck from Appellant's Return.

Lastly, in her Return, counsel for Appellant implies that the undersigned frivolously initiated this lawsuit as a delay tactic, that the arguments advance by the undersigned are "the pinnacle of disingenuousness", and that the undersigned have "no fidelity to the truth." (Appellant's Return at 8-9). In doing so, Appellant relies on a document that was not made part of the record before the Circuit Court to support that Respondent has ignored arguments that were previously advance by Appellant. The undersigned could have no knowledge of arguments that were advanced by Appellant three years ago in briefing that was never filed and is not present in the Circuit Court record. The undersigned could only scrutinize the hearing transcripts from arguments made before the Circuit Court, and could not ascertain whether Appellants made the aforementioned arguments because she did not preserve these arguments as part of the record by filing her brief. This is exactly why the rules of issue preservation exist.

In *In re Anonymous Member of South Carolina Bar*, the Supreme Court of South Carolina reminded practitioners of what it characterized as "a growing problem among the bar, namely the manner in which attorneys treat one another in oral and written communication." 392 S.C. 328, 332, 709 S.E.2d 633, 635 (2011). A lawyer "must act in a dignified and professional manner, with proper respect for the parties, witnesses, opposing counsel, and for the Court. When a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial

system, and as well, disservices his client." *In re Goude*, 296 S.C. 510, 512, 374 S.E.2d 496, 497 (2011). "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." Rule 8.4(e), RPC, Rule 407, SCACR.

Accusing the undersigned of frivolously filing a lawsuit as a delay tactic, as well as questioning the undersigned's character for truthfulness, can "only inflame the passions of everyone involved, make litigation more intense, and undermine a lawyer's ability to objectively represent his or her client", and is the exact type of behavior that the Supreme Court has noted will bring into question the integrity of the judicial system and prejudice the administration of justice. *In re Anonymous*, 392 S.C. at 337, 709 S.E.2d at 638. It is particularly noteworthy that Appellant has chosen to do this in a public filing in which the undersigned are counsel of record. While this does not have any bearing on the merits of Respondent's Motion to Dismiss, it is worth noting that these types of attacks are inappropriate and should not be part of our legal discourse. For the aforementioned reasons, and those put forth in Respondent's Motion to Dismiss, Respondent respectfully requests that his Motion to Dismiss be granted and this Appeal dismissed.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

PARKER LAW GROUP, LLP

November 11, 2022
Hampton, South Carolina

By:  _____

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PROOF OF SERVICE

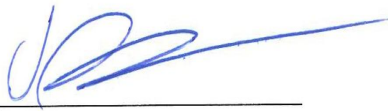
The undersigned certifies that a copy of Respondent’s Reply to Motion to Dismiss Appeal has been served upon the following counsel of record by emailing a copy of the same this 12th day of November, 2022.

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PARKER LAW GROUP, LLP

November 12, 2022
Hampton, South Carolina

By: 
John E. Parker, Jr.

November 11, 2022

Via Email Only: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

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Nov 14 2022

SC Court of Appeals

*Re: Larry Rahn v. Barbara Smith
Appellate Case No.: 2020-000607*

Dear Ms. Kitchings:

Please find enclosed for filing Respondent's Reply in Further Support of Motion to Dismiss Appeal, and Proof of Service.

By copy of this letter, Respondent's Reply in Further Support of Motion is being served on all counsel of record.

With kind regards, I am

Sincerely,



John E. Parker Jr.

JAY/aem

Enclosures as stated

Cc: Tomas J. Rode, Esq. (Via Email Only)

Gregory E. Parker, Esq. (Via Email Only)