

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Apr 26 2021

SC Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Master in Equity

Appellate Case No. 2020-001023

Mark Giles Pafford,

Appellant,

v.

Robert Wayne Duncan, Jr.,
Robert Duncan, Sr., and Frank Eason,
d/b/a "Rock City Heavy Hauling, Inc."
of whom

Robert Wayne Duncan, Jr. and
Robert Duncan, Sr. are the

Respondents.

REPLY BRIEF OF APPELLANT

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
(803) 324-8100
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities 3

Arguments 4

I. DO THE FACTS PRESENTED PROVE FRAUD ON THE PART OF APPELLANT AS TO THE
VEHICLE CONTRACT? 4

II. IS THERE EVIDENCE ESTABLISHING THE WORTH OF RETURNED THUNDERBIRD? 6

Conclusion 7

TABLE OF AUTHORITIES

CASES: SOUTH CAROLINA SUPREME COURT

Bankers Ins. Co. of Pa. v. Griffin, 244 S.C. 552, 137 S.E.2d 785, 787 (1964) 4
Whitman v. Seaboard Airline Ry., 107 S.C. 200, 107 S.E. 861 (1917)
Tollison v. Reaves, 277 S.C. 443, 289 S.E.2d 163 (1982) 4

STATUTES

S.C. Code Ann. § 56-9-20(11) 4

CASES: FEDERAL APPELLATE COURTS

Miller v. Premier Corp., 608 F.2d 973 (4th Cir. 1979) 5

OTHER AUTHORITIES

37 AM.JUR.2D *Fraud & Deceit* §§ 57-59 5
37 C.J.S. *Fraud* § 11 5
Hubbard & Felix, THE SOUTH CAROLINA LAW OF TORTS (2d ed. 1997),
Ch. 5, Sec. A. a.(1)(a), p.328-329 5

ARGUMENT

I. DO THE FACTS PRESENTED PROVE FRAUD ON THE PART OF APPELLANT AS TO THE VEHICLE CONTRACT?

To review: the Appellant PAFFORD produced title copies in proof of the agreement for sale of vehicles to the Respondents. He testified that he owned the vehicles to be conveyed or could convey titles. [RECORD ON APPEAL, p.41 – 53; p.940, l.13-17; p.944, l.7-10.] The Trial Court, however, specifically held:

Second, Plaintiff failed to prove he is the owner of the 2009 trailer currently in the Defendants' possession. No current title was provided, and Plaintiff stated repeatedly that he was unsure of what trailer was in Defendants' possession, and whether he could transfer good title. Plaintiff also stated it may be stolen.

[RECORD ON APPEAL, Order of May 4, 2020, p.4.]

A title to that vehicle was, in fact, filed with the Court as an exhibit to its verified Motion to Strike Answer and/or for Summary Judgment, filed December 11, 2017. [RECORD ON APPEAL, p.45 – 46.]

In *Tollison v. Reaves*, 277 S.C. 443, 289 S.E.2d 163 (1982), our Supreme Court held:

The Motor Vehicle Financial Responsibility Act, S.C. Code Ann. § 56-9-20(11) (1976) describes an "owner" as a person who holds the legal title of a motor vehicle. However, S.C. Code Ann. § 56-19-320 (1976) states that a certificate of title is merely prima facie evidence of ownership. Moreover, the presumption of ownership evidenced by the certificate of title may be overcome by evidence that the true owner of the vehicle is a person other than the one in whose name the vehicle is registered. *Bankers Ins. Co. of Pa. v. Griffin*, 244 S.C. 552, 137 S.E.2d 785, 787 (1964).

[*Id.*, 277 S.C. at 445, 289 S.E.2d at 164.]

The Respondents presented no credible evidence to overcome the title. Over the Court's ruling excluding undisclosed matter¹, they produced a copy of a third party website alleging matter

1. The ruling itself does not appear in the Record on Appeal due to the faulty recording. It is referenced in counsel's argument and acknowledged by the Court, despite its allowance of the document referenced above. [RECORD ON APPEAL, p.913, l.4 – p.915, l.10.] The Appellant contends the allowance of that document as evidence was hearsay and clearly prejudicial.

from 2009. They did not produce any witness claiming ownership, nor any other evidence of differing ownership.

Professors Hubbard and Felix make this point in their discussion of fraud or misrepresentation:

In order to be actionable, the representation must be a statement (or a set of “communicative” actions), which concerns an *existing fact*. Thus the following are not normally actionable:

...

(iii) Predictions of future events, unless the prediction is simply a lie or is based upon special knowledge;

[Hubbard & Felix, *THE SOUTH CAROLINA LAW OF TORTS* (2d ed. 1997), Ch. 5, Sec. A.a. (1)(a), p.328-329; *emphasis in original*; footnotes omitted but citing *Whitman v. Seaboard Airline Ry.*, 107 S.C. 200, 107 S.E. 861 (1917); *Miller v. Premier Corp.*, 608 F.2d 973 (4th Cir. 1979); 37 AM.JUR.2D *Fraud & Deceit* §§ 57-59; 37 C.J.S. *Fraud* § 11.]

The Respondents claim, and the Trial Court concluded, that the fraud consisted of PAFFORD’s lack of ownership, and thus inability to convey good title.

This conclusion was based on his lack of title; since that title exists, and its substance is unrebutted, the only basis for fraud would involve PAFFORD’s future responsibility to convey title.

There is no evidence of any demand by the Respondents, or any failure or refusal by PAFFORD, to complete the transaction. There is no evidence that he could not convey once the Respondents made full payment.

Further, in light of an extant valid title, all discussion of some ghostly claim from a third-party website from 2009 can have no effect. There is no basis to maintain that PAFFORD could not convey title to the 2009 trailer. There is no basis for a claim of fraud.

II. IS THERE EVIDENCE ESTABLISHING THE WORTH OF RETURNED THUNDERBIRD?

The parties had an agreement for the sale of a Thunderbird to PAFFORD, which car was returned to them. There was no evidence of the car's value. The Trial Court concluded:

After having the Thunderbird for about a week, Plaintiff returned it to Defendants' property, stating only he was not satisfied. Plaintiff refused return of the vehicle or the transfer of its title. Defendants later sold the vehicle to a third party for \$8,000.00.

[RECORD ON APPEAL, p.2.]

The Appellant notes first that there is no evidence of PAFFORD having title to the Thunderbird, nor any that he refused to transfer that title (presumably, back to the Respondents.) [RECORD ON APPEAL, p.921, l.20 – p.922, l.15.]² There was no dispute that PAFFORD did return the vehicle. This finding is either a misprint or a flat contradiction of the evidence.

Secondly, even assuming PAFFORD lacked grounds to rescind the agreement as to the Thunderbird, the Appellant notes that we have no evidence as to the Respondents efforts (if any) to obtain a fair price, and no evidence of the car's condition at the time of return or resale (other than the testimony of the Appellant).³ PAFFORD testified that he took the car in trade for wages [RECORD ON APPEAL, *supra.*]; that fact does not provide the Court with an independent valuation of the Thunderbird's value. There is no proper evidence of mitigation of damages for the return

² PAFFORD in fact claimed the Thunderbird had mechanical problems and that he refused the car. [RECORD ON APPEAL, p.921, l.20 – p.922, l.15.] The Trial Court entered no findings or conclusion on his claim that he rescinded the agreement on the car.

³ The evidence presented on point (Mr. Robert Duncan Sr.) was as follows:

Q What happened to the T-Bird when it was returned, sir?

A What happened to it?

Q Yes.

A When he returned it?

Q Yes, sir.

A Well, I had it for about a year. Finally, I just sold it to get rid of it.

Q What did you sell it for?

A I don't know. \$8,000 I think.

Q Do you have documents on that sale, sir?

A No.

Q I presume it's obvious if you have documents they weren't supplied to us to your knowledge; is that correct?

A I didn't realize that was important.

[RECORD ON APPEAL, p.132, l.10 -25.]

of the Thunderbird. There is no evidence of an independent value for that car. In light of these facts, no damages resulting from its return and resale can be awarded.

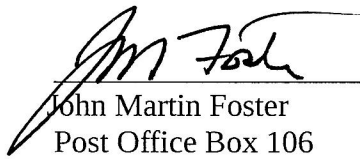
CONCLUSION

PAFFORD owned the vehicles that were the subject of the parties' agreement to sell them. There was no credible evidence to refute this fact. There was no evidence of his refusing to convey, or of such intent.

The return of the Thunderbird to the Respondents did not automatically confer a right to recover a net sum after an an alleged sale, in the lack of evidence of the car's value.

Appellant are entitled to a ruling of this Court granting them relief from the Orders of May 4th and June 24th, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Martin Foster", is written over a horizontal line.

John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellant

April 26, 2021

Rock Hill, South Carolina

RECEIVED

Apr 26 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Master in Equity

Appellate Case No. 2020-001023

Mark Giles Pafford,

Appellant,

v.

Robert Wayne Duncan, Jr.,
Robert Duncan, Sr., and Frank Eason,
d/b/a "Rock City Heavy Hauling, Inc."
of whom

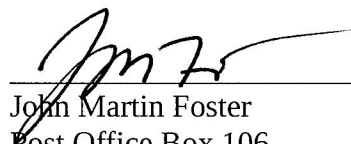
Robert Wayne Duncan, Jr. and
Robert Duncan, Sr. are the

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief of Appellant complies with Rule 210(b),
S.C.A.C.R.

April 26, 2021



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731-6106
(803) 324-8100
Attorney for Appellant