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Apr 24 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Judge

Appellate Court Case No.: 2022-001619

ScanSource, Inc., Respondent
v.
Dependable Technology Center, LLC
and George G. Moraru, Appellants,

INITIAL REPLY BRIEF OF APPELLANTS

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ARGUMENT IN REPLY

I. RESPONDENT FAILS TO ADDRESS THE DUE PROCESS ISSUE PRESENTED.

The issue presented is whether the Appellants were afforded Due Process when the court made a final ruling as a matter of law on the issue of Appellant Moraru's liability under a personal guarantee prior to Appellants being allowed to offer any evidence or testimony on the issue. The cases cited by Respondent relate to the court's ability, after the conclusion of a case, to issue a written order that varies from the ruling announced from the bench. The Respondent relies on cases, unlike in the present case, where both parties were provided the opportunity to present evidence and testimony on the issues prior to the court's ruling. Here the Appellants were never such an opportunity. This case presents a Due Process issue, especially given that the court's ruling did nothing short of foreclosing any meaningful opportunity to have essential facts decided by the jury. The result of the court's ruling as a matter of law in this case could only result in Appellant Moraru being held personal liable for the corporate debt. Respondent fails to address the issue presented or explain how the holding of Halsey v. Simmons, 432 S.C. 54 (S.C. 2020) does not apply in this case.

There is no question that the court's ruling was a final ruling on the issue

and that left Moraru without any defense to personal liability for the corporate debt. T. P. 55. The ruling therefore ended Moraru's ability to have a jury decide the facts pertaining to the personal guarantee before the Appellants had an opportunity to present evidence on the issue.

II. RESPONDENT'S ARGUMENT IGNORES THE FACT THAT THE RULING EFFECTIVELY ENDED THE JURY TRIAL AS TO APPELLANT MORARU ONCE THE VALIDITY OF THE PERSONAL GUARANTEE WAS REMOVED FROM THE JURY'S CONSIDERATION.

The facts relied on by the Respondent to argue that the Appellant was afforded Due Process all occurred after the court ruled that the personal guarantee was valid and binding as a matter of law. Ruling that the personal guarantee was binding as to Appellant Moraru removed Moraru's defense to personal liability for the corporate debt. Once Moraru's defense had been eliminated as a matter of law a continuation of the trial became meaningless, as no outcome other than Moraru being personally responsible for the corporate debt could result. The record shows that the issue of Due Process was fully argued to the court and that the decision essentially ended the case as Appellant Moraru was thereby precluded from presenting his defense to the jury.

While clearly opposing the directed verdict, Appellant Moraru made it clear

that he had no defense to argue due at that point due to the court's having ruled the personal guarantee was valid and binding. T. Pg. 53-55. The issue was clearly raised to the court and the court made a comment indicating that the issue was preserved. Therefore, no further objection was required upon the entry of the directed verdict.

III. RESPONDENT'S ARGUMENT THAT APPELLANT DID NOT OPPOSE DIRECTED VERDICT IS UNSUPPORTED BY THE RECORD.

Respondent states that there was "[n]o opposition to the directed verdict motion was made on the basis of Appellants' alleged lack of opportunity to present its case." RIB, pg 10. To the contrary, the record shows that Appellant Moraru clearly opposed the entry of the directed verdict but had no defense to argue after the court's ruling that the personal guarantee was valid and enforceable against Appellant Moraru. 55. As the Appellants made clear, the court's ruling on the validity of the personal guarantee could lead to no result other than personal liability for Appellant Moraru and therefore any further proceedings past that point were entirely futile. T. Pg. 55.

IV. RESPONDENT'S ARGUMENT OVERLOOKS THE FACT THAT THE JUDGMENT WAS BASED ON A RULING THAT PRECLUDED THE APPELLANTS TO PRESENT EVIDENCE AND TESTIMONY ON THE ISSUE OF THE AMOUNT OF DEBT SUBJECT TO

PERSONAL GUARANTEE.

The court's ruling as to the validity of the personal guarantee foreclosed further challenge on the issue of the personal guarantee. This included the amount of liability of Appellant Moraru under the personal guarantee. T. Pg. 51. The Appellants clearly raised an objection to the court's ruling and the court made a statement indicating that the issue was preserved. 53. No further objection was required.

CONCLUSION

Based on the foregoing the decision of the trial court granting a directed verdict and judgement against Appellants should therefore be reversed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on April 24, 2023, I served the Initial Reply Brief of the Appellants on the Respondent by delivering a copy AIS email to counsel of record and others if, and as, indicated below:

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