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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Christian Wienands, Charlotte Muxlow and Gregory
Muxlow.....Appellants,

v.

South Wind Ranch, Ronald Hakala, and Ashley BlackRespondents.

Appellate Case No. 2023-000081

APPELLANTS' INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE THE APPELLANTS SUBMITTED ENTIRE DEPOSITION TRANSCRIPTS AND A VERIFIED PLEADING SUPPORTING THEIR CLAIMS

2. WHETHER THE TRIAL COURT'S RULING VIOLATES THE APPELLANTS' RIGHT TO A JURY TRIAL UNDER THE SOUTH CAROLINA CONSTITUTION AND THE UNITED STATES CONSTITUTION

STATEMENT OF THE CASE

This is an appeal of a trial court's grant of summary judgment. After the appellants paid a deposit to South Wind Ranch, a wedding venue, the wedding *as planned and contracted for* was made impossible by the Coronavirus and related government prohibitions. When the appellants sought to reschedule their wedding, South Wind Ranch unilaterally increased the price by several thousand dollars more than the contracted-for price. Due to South Wind's breach and increase in cost, the appellants asked for a refund of their deposit, which the respondents refused. The appellants then discovered that the respondents had made important and material fraudulent statements in the inducement and making of the contract, which the appellants had relied on in paying their deposit. After the appellants paid their deposit, the respondents made several other misrepresentations, which caused the appellants to incur additional damages.

The appellants filed suit in the Greenville County Court of Common Pleas alleging causes of action for breach of contract accompanied by a fraudulent act, violation of the South Carolina Unfair Trade Practices Act, quantum meruit, and negligence. South Wind moved to dismiss, essentially arguing that the appellants may *only* file a breach of contract claim. The trial court rightly denied that motion because the appellants stated all the elements of the established causes of action pled in the complaint, and also stated voluminous facts to support them. South Wind then filed a motion for summary judgment, again arguing that the appellants may only pursue a breach of contract claim. The appellants responded to the motion by submitting entire deposition transcripts and text messages supporting their claims and directed the court's attention to the filed verification of the complaint.

Notwithstanding the appellants' substantial evidence in support of their claims, the trial court granted the respondents' motion for summary judgment. The appellants timely filed a Rule

59(e) motion, which the trial court denied. The appellants then timely filed a notice of appeal. This appeal follows.

FACTS

In 2019, the appellants visited South Wind Ranch, toured the venue, met with staff, and booked the venue for the planned wedding of Charlotte Wienands and Gregory Muxlow. The appellants secured their date with a deposit. They later agreed to pay additional fees to Ashley Black in exchange for her wedding planning services. After COVID-19 prevented the Muxlows from proceeding with their wedding as planned,¹ the appellants contacted South Wind Ranch to discuss the possibility of rescheduling their event. Black told the appellants that they *would* be able to move their wedding to a new date and that she would provide them with potential dates. The appellants attempted to contact Black multiple times over the following weeks but were unable to reach her. When the appellants were finally able to speak with Black, they learned that South Wind Ranch had unilaterally doubled the cost of the wedding to be rescheduled for the following year. South Wind refused to resolve the issue with the appellants or to refund their deposit, even though South Wind had not performed any contracted-for services and had misled the appellants.

After the appellants made repeated attempts to resolve the dispute, South Wind Ranch ultimately threatened the appellants with its legal team. Left with no other options and already

¹ The appellants originally planned to have a wedding with over 150 people, including at least 10 of Charlotte's closest relatives from Germany. All of this was communicated to South Wind, and South Wind was fully aware that the contracted-for price was for a wedding to include many people, including many from Germany. Because South Wind's fraud and breach forced Charlotte and Gregory to have a make-shift wedding in a national forest without any of Charlotte's family from Germany, the respondents argue that the wedding was not impossible. It is important to note that the respondents entered into an agreement with the appellants *for the purpose* of having a large wedding with Charlotte's family from Germany. Once the respondents received the appellants' money, they refused to provide the contracted for services and instead used the Pandemic to profiteer and unilaterally raise the contracted-for price by several thousand dollars.

having spent time and money in reliance on South Wind's assurances and promises, the appellants filed suit against South Wind Ranch for, *inter alia*, the respondents' deception, unlawful retention of the appellants' funds, and attempt to profit from the Pandemic.

South Wind filed a motion to dismiss, arguing that the appellants could only bring a breach of contract claim against the respondents.² The trial court denied South Wind's motion and allowed all the appellants' claims to proceed. After the appellants engaged in discovery and gathered evidence and testimony in support of their claims, the respondents moved for summary judgment, again arguing that the appellants could only allege a cause of action for breach of contract. In arguing against the respondents' motion, the appellants submitted entire deposition transcripts and text messages supporting their claims³, far surpassing the mere scintilla required to survive the motion. The appellants also pointed the court's attention to a notarized verification of the complaint, which affirms all the allegations of the complaint under oath. This time, though, the trial court granted the respondents' dispositive motion, despite the ruling in *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009) and its progeny. The appellants timely filed a motion to alter or amend the judgment, which the trial court denied. The appellants then timely filed this appeal.

² The appellants brought a claim for breach of contract accompanied by a fraudulent act, which necessarily includes a breach of contract claim. If the respondents' argument were correct, every breach of contract accompanied by fraudulent act claim would be required to be dismissed and breach of contract accompanied by fraudulent act would not exist as a cause of action. Similarly, many SCUTPA claims involve breaches of contracts, as trade practice necessarily include sales of goods and services. If SCUTPA claims were subject to dismissal every time a contract was arguably involved, SCUTPA would not exist as a cause of action.

³ The email to the Court, transcripts, and text messages are incorporated by reference herewith, and will be included within the Record on Appeal, and all provide more than a scintilla of evidence supporting the appellants' claims.

ARGUMENTS

I. The Trial Court's ruling is in direct conflict with *Hancock*.

“Summary judgment is proper only when it is clear that ‘there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Koester v. Carolina Rental Center, Inc.*, 443 S.E. 2d 392, 384 (1994) citing *Hamilton v. Miller*, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” *Ibid.* In *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009), the South Carolina Supreme Court clearly held that, where there is a scintilla of evidence to support a cause of action, the trial court must deny a motion for summary judgment.

Viewing the facts in the light most favorable to the appellants, genuine issues of material fact exist such that a grant of summary judgment was improper. In its argument against the respondents' motion, the appellants submitted ample evidence in support of their claims. For example, the appellants established that South Wind, through its owner Ron Hakala, is engaged in a business that affects commerce and members of the public and is capable of repetition. *See e.g.*, Ronald Hakala Deposition Transcript p. 49: 8-14; Hakala Dep. p. 51:5-7; Hakala Dep. p. 58:3-6; Hakala Dep. p. 71:4-15; Hakala Dep. p. 76:11-22; Ashley Black Deposition Transcript p. 11:14-17; Black Dep. p. 47:18-25. The appellants showed, through the transcripts submitted and through the allegations of their verified complaint, that the respondent's SCUTPA violations directly affected and damaged them in the very events giving rise to this action. This evidence directly supports the appellants' unfair trade practices claim, and exceeds the mere scintilla required to survive summary judgment.

The appellants also submitted evidence that the respondents misled them with statements in the making of the contract at issue and that the respondents unilaterally increased the agreed upon price after the Pandemic made the wedding the parties agreed to plan impossible. Hakala Dep. p. 40:2-9; Black Dep. p. 16:13-22; Black Dep. p. 17:16-25; Black Dep. p. 18:10:25, p. 19:1-4; Black Dep. p. 25:13-19. See also the verified complaint, Paragraph 13, which states "...the plaintiffs relied on statements and assurances made by the defendants and booked the venue for a wedding date." Paragraph 17 states the appellants "relied on Blacks assurances" and that the appellants "confirmed" with the appellants "they would be allowed to reschedule and that there were many potential dates." Paragraph 35 states that the appellants "attempted to manufacture a self-serving record with emails" and that those emails stated falsehoods related to the appellants' willingness and effort to schedule the wedding for a date when the Pandemic would not make it impossible. Ashley Black's false statements about the possibility of rescheduling and her work to secure alternate dates is described in Paragraphs 17 through 35.

In all, the appellants submitted much more than a scintilla of evidence to supports their allegations that the respondents made fraudulent and misleading statements in the inducement and the making of a contract; engaged in unfair and deceptive business practices which affect the public and are capable of repetition; price gouged and profited from the Pandemic; were unjustly enriched due to retention of funds paid toward an event made impossible by the Pandemic. The evidence supporting these claims includes multiple deposition transcripts, text messages between the parties, and a verification, which makes allegations of the complaint sworn under oath.

It should be noted that the appellants' verified complaint *alone* should have been sufficient to survive the respondents' motion for summary judgment.⁴ "A verified complaint is an acceptable substitute for an affidavit at the summary judgment phase as long as the pleading satisfies Rule 56(e)." *Dawkins v. Fields*, 345 S.C. 58, 67, 580 S.E.2d 433, 438 (2003); *See also, Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 471, 570 S.E.2d 197, 203 (2002) ("[t]he facts contained in a verified complaint operate as a substitute for an opposing affidavit for summary judgment when the facts contained in the verified complaint are based on personal knowledge). Because the appellants submitted evidence to rebut the respondents' summary judgment motion and submitted a verified complaint, under *Hancock*, the trial court should have denied the motion.⁵

II. The trial court's ruling violates the constitutions of South Carolina and the Unites States.

The United States Constitution provides for the right to a jury trial for civil causes of action: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..." U.S. Const. amend. VII. The South Carolina Constitution goes further, requiring that the right to a jury trial be preserved "inviolable." S.C. Const. art. 1, §14; SCRCP 38(a). The appellants completely lost their right to a jury trial under the constitutions of South Carolina and the United States because the trial court, instead of a jury, decided all the fact

⁴ Although the complaint's caption does not read as a verified complaint, the appellants submitted a verification via letter to the Court. A clocked copy of that verification is contained within the Record on Appeal.

⁵ Even if the respondents were correct that the appellants were required to proceed on a breach of contract claim, the trial court should not have usurped the jury's role in deciding fact questions about mutual assent, performance, and breach but should have allowed the appellants to amend the complaint. (Pursuant to Rule 15(a) SCRCP, "leave to amend shall be freely given "when justice so requires." SCRCP.) Instead, the trial court made factual determinations of whether there was fraud in the making of the contract, who breached the contract, whether retention of money paid for something that later became impossible was allowed, and other fact questions that must be answered only by a jury.

questions related to their case. In order to do this, the trial court had to ignore all of the evidence submitted by the appellants and ignore the requirement that all facts, evidence, and inferences be viewed in light most favorable to the appellants. The court had to ignore the requirement that all facts alleged in the verified complaint must be taken as true. If the verified complaint is true, as it must be viewed by the court, then the respondents engaged in deceptive business practices, engaged in fraud in making and then breaching a contract, and unjustly enriched themselves by retaining – and attempting to increase – money paid for the completion of an impossible performance. That means a jury may, and likely will, find for the appellants. Deciding the facts and outcome of the appellants’ case violated their rights under the constitutions of South Carolina and the United States because it robbed them of a right guaranteed by those constitutions.⁶

Even if a breach of contract claim were more appropriate than those pled, the trial court should not have usurped the jury’s role in deciding fact questions about mutual assent, performance, and breach. Instead, amendment of the complaint would have been more appropriate since, pursuant to Rule 15(a) SCRCP, “leave to amend shall be freely given “when justice so requires.” SCRCP.) In dismissing the case entirely, the trial court made factual determination of whether there was fraud in the making of the contract, who breached the contract, whether retention of money paid for something impossible was allowed, and other fact questions appropriate only for a jury.

Finally, it should be noted that the appellants have a right to a jury trial for both their common law causes of action and their statutory cause of action under the South Carolina Unfair

⁶ In addition to their right to a jury trial, the trial court also violated the appellants’ rights under the Equal Protection clause because it treated them differently than similarly situated litigants who are afforded their constitutional right to a jury trial and allowed to proceed with their claims, especially under the scintilla standard.

Trade Practices Act. The United States Supreme Court has "...considered the applicability of the constitutional right to a jury trial in actions enforcing statutory rights 'as a matter too obvious to be doubted.'" *Curtis v. Loether*, 415 U.S. 189 (1974) (quoting *Parsons v. Bedford*, 3 Pet. 433 (1830)). See also *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962) and *Hepner v. United States*, 213 U.S. 103 (1909)).

CONCLUSION

For the foregoing reasons, the appellants respectfully request that the trial court's grant of summary judgment be reversed, and this case be remanded for trial.

Respectfully submitted,

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