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Jul 03 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2021-CP-22-00927
Appellate Case No. 2023-000063

Steven Michael Okun, as Personal Representative
of the Estate of Jane Luanne Okun..... Respondent

vs.

Pobuckra Properties, LLC and
Alliance Commercial Property Management, Inc Appellants

RESPONDENT’S RETURN TO
APPELLANTS’ MOTION TO STRIKE

The Respondent offers the following return to Appellants’ Motion to Strike.

BACKGROUND FACTS

This case is before the Court based on Appellants’ appeal of the trial court’s order granting Okun’s Motion to Strike Defendants’ Answers and Affirmative Defenses. Respondent believes that the deposition of David Teems should be included in the record because it was referenced during the argument of the motion.

ARGUMENT

Respondent refers the Court to the Transcript of Record of January 6, 2023 in which Respondent's counsel referred to Teems' deposition in the following manner:

So at the deposition of the defendants' agent about six weeks ago, he indicated that he had lost the handrail, they no longer had the handrail. (Tr. p, 2, lines 22-24).

Later, Appellants' counsel tangentially referred to Teems' deposition when she stated as follows:

And as far as the handrail goes, the handrail was disposed of by a third party landscaping company that was doing some clean up from -- during the spring, of the leaves. The handrail had been stored in a fenced in enclosure by the property manager, and unbeknownst to him, they went and got this handrail from an enclosed area where he had stored it, and got rid of it. And immediately when he found out they'd thrown it out, he called, tried to find it, tried to do everything he could. (Tr. p. 4, lines 1-9).

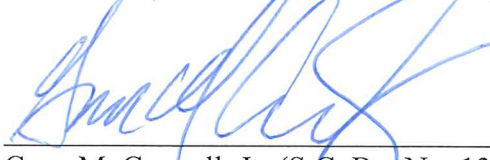
In sum, Teems' testimony at his deposition was part of the argument for Okun's Motion to Strike Defendants' Answers and Affirmative Defenses and the Teems deposition was presented by oral argument to the Court. Accordingly, it should be included in the Record. Both Appellants' counsel and Respondent's counsel made reference to it and it was a part of the Court's decision. In sum, a party cannot complain of an error which his own conduct has induced. See *Cox v. Cox*, 290 S.C. 245, 248, 349 S.E.2d 92 (Ct. App. 1986).

CONCLUSION

Accordingly, because Teems' deposition was discussed by both counsels and considered by the Court it should be part of the record especially in light of the fact that both counsel agree that Teems, agent of the Appellant, lost the crucial evidence in this case.

Respectfully submitted.

KELAHER, CONNELL & CONNOR, P.C.



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July 3, 2023
Surfside Beach, South Carolina

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APPEAL FROM GEORGETOWN COUNTY
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PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of **Respondent’s Return to Appellants’ Motion to Strike** on the 3rd day of July 2023, by depositing a copy of same in the United States Mail, postage prepaid, to:

M. Dawes Cooke, Jr., Esquire
D. Summers Clarke, II, Esquire
Barnwell Whaley Patterson & Helms, LLC
PO Drawer H
Charleston, SC 29402-0197

Agelo L. Reppas, Esquire
Colleen P. Sorensen, Esquire
BatesCarey LLP
191 North Wacker, Suite 2400
Chicago, IL 60606

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 3rd day of July 2023

Angie C. Bent
Notary Public for South Carolina
My Commission Expires: 1-22-29

KELAHER, CONNELL & CONNOR, P.C.
ATTORNEYS AT LAW
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THE COURTYARD
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July 3, 2023

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Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Appellate Case No. 2023-000063
Steven Michael Okun, as Personal Representative of the Estate of Jane Luanne Okun v. Pobuckra Properties, LLC and Alliance Commercial Property Management,
C/A No. 2021-CP-22-00927
Our File No. 2021-0241C

Dear Ms. Kitchings:

Enclosed please find Respondent's Return to Appellants' Motion to Strike and Proof of Service in the above-captioned matter.

By copy of this letter, we hereby serve a copy of the above-stated documents on Appellants through counsel of record

Should you have any question or need anything further at this time, please do not hesitate to contact me.

Sincerely yours,



Gene M. Connell, Jr.

GM CJr:sm
Enclosures

cc: M. Dawes Cooke, Jr., Esquire
D. Summers Clarke, II, Esquire
Agelo L. Reppas, Esquire
Colleen P. Sorensen, Esquire