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 Black, ...Respondents.

Appellate Case No. 2023-000081

APPELLANTS' FINAL REPLY BRIEF

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REPLY

Hancock v. Mid-South Mgmt., Co., 381 S.C. 326, 673 S.E.2d 801 (2009) made it crystal-clear that a motion for summary judgment must be denied where a scintilla of evidence exists which supports the non-moving party's claims. With so much evidence supporting not one, two, or three – but all – of the appellants' claims, summary judgment was inappropriate, and the trial court's grant of summary judgment is in direct conflict with *Hancock*. An affidavit would have been enough to survive the motion, and indeed, the complaint is verified, standing as an affidavit in support of the appellants' claims. *Dawkins v. Fields*, 34 5 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). That evidence, entire deposition transcripts, emails, and text messages, all of which support the appellants' claims, was submitted to the trial court ahead of the summary judgment hearing, and it is far more evidence than the low scintilla threshold required to survive a summary judgment motion. The appellants respectfully submit that this action should be sent back to the trial court for trial so that a jury may decide the many genuine issues of material fact in this case.

I. South Wind misstates facts in the Introduction of its brief.

Gregory and Charlie Muxlow did not choose "not to get married at the venue…due to concerns about COVID…" Rather, the appellants repeatedly tried to find a solution for the fact that the pandemic rendered the wedding they bargained-for and purchased impossible. The appellants purchased a wedding for nearly 200 people, dozens of whom live in Germany. The pandemic made it impossible to have a wedding with the number of guests they bought a wedding

for and also made it impossible for all but three of the bride's family members to travel from Europe for the wedding. The appellants bought the wedding based on the number of guests attending the wedding and the bride's family, who live in Europe, attending the wedding. The respondents sold the appellants a wedding venue based on those specific needs, and the pandemic made such a wedding literally impossible.

It is well-settled that a contract fails where it is "…rendered impossible by an act of God, the law, or by a third party." *Hawkins v. Greenwood Development Corp*., 493 S.E.2d 875 (Sup. Ct. 1997) citing *Moon v. Jordan,* 301 S.C. 161, 164, 390 S.E.2d 488, 490 (Ct.App.1990). Not only was the COVID pandemic an act of God, but "the law" made it illegal for the number of guests the appellants bought the wedding for to attend. The law also made it illegal for dozens of the planned guests to travel from Europe to attend the appellants purchased wedding.

Because the law made it impossible for South Wind to provide what the appellants purchased, the appellants tried to work with the respondents to reschedule the wedding the appellants had already paid thousands of dollars for. Instead of working toward a reasonable resolution for the following year, the respondents breached the contract between the parties by attempting to use the pandemic to gouge the appellants, and roughly doubled the price of the wedding – an option not contemplated or referenced anywhere in the contract.

The reason the respondents' misstatement is important for this appeal is that it shows genuine disputes of material fact exist for a jury's determination. Because the appellants supported their allegations – and facts as they have alleged them – with entire deposition transcripts, a verified complaint, emails, and text messages, the trial court's grant of summary judgment was in direct contradiction to the ruling in *Hancock* and should be reversed.

The respondents have a section at page 4 of their brief titled, "D. Appellants' Decision to Postpone," which indicates, wrongly, that the appellants simply made a decision to postpone, instead of what actually happened – the event the appellants paid for being rendered impossible by the pandemic. Indeed, government mandates made it *illegal* (and therefore impossible) for the appellants to get what they paid the respondents for, which was an area and things included therein, to accommodate nearly 200 guests. Travel restrictions in Europe made it *illegal* (and therefore impossible) for almost all of the bride's family to travel to board an airplane, much less travel to the United States. "When a contract is originally legal, but performance becomes illegal due to a change in the law, any subsequent performance is against public policy and the party who has agreed to perform is excused from doing so." *White v. JM Brown Amusement Co., Inc.*, 601 S.E.2d. 342 (Sup. Ct. 2004).

As shown by emails exchanged between the parties, and as stated in the respondents' own brief at page 6, it was Respondent Ron Hakala that made a veiled threat of legal action after he unilaterally increased the price of the venue, which was a breach of the contract. It is not surprising that this portion of the respondent's email was left out of the quoted email: "I have 3 other partners and a solid legal and accounting team. It's a terrible emotional frustrating time for so many Brides. I have to be consistent in operating the business." (R. p. 301). For a summary judgment motion, the appellants are entitled to every inference weighed in their favor, and the inference here is that the respondents clearly stated they would keep the appellants' deposit, even though the pandemic rendered the event impossible as planned, and even though the respondents breached their agreement to provide a venue for a stated price.

It is important to note that the portion of the email omitted by the respondents does not only support the appellants' breach of contract accompanied by fraudulent act cause of action (the

respondents stated repeatedly they would "work with" the appellants while simultaneously breaching the operative contract and nearly doubling the price), but also supports the appellants' other causes of action, including the South Carolina Unfair Trade Practices Act claim because Respondent Ron Hakala admits that he has refused to return *any* deposits, in spite of the fact that the pandemic made several couples' weddings impossible. The respondents' statement and refusal came after Appellant Charlie Muxlow told Hakala in plain terms "A November wedding is **impossible** for us as my entire family is international and unable to attend." (Respondents' Brief, p. 6).

The respondents' statements were disingenuous and deceptive because they made them only to generate a self-serving record. The statements essentially amount to "We want to work with you, but we are also going to double the price stated in the contract, and it does not matter that the wedding you paid for is now impossible." (Verified Complaint – R. pp.19-21, ¶¶ 16-23; R. pp. 23-24, ¶¶ 34-36; R. p. 25, ¶¶ 44, 45[1]). What matters is that the appellants have stated that the respondents breached the contract accompanied by the deception described above and have acted tortiously, and the appellants have supported those allegations with more than the mere scintilla of evidence required to survive summary judgment.

II. The suit arises from tortious conduct, not merely a contract.

On page 8 of the respondents' brief, they state "Appellants' entire lawsuit – and all of their claims – stem from their rental of South Wind Ranch as a venue for their wedding," which is simply not true. Many of the appellants' claims stem from the respondents' deception and

[1] 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. – R. p. 73, lines 2-9; Black Dep. - R. p. 138, lines 13-22; R. p. 139, lines 16-25; R. p. 18, lines 10-25, R. p. 141, lines 1-4; R. p. 147, lines 13-19).

profiteering, their negligence outside of the contract in dealing with the appellants, and the fact that the respondents victimized the appellants, consistent with the general way the respondents do business with the public. The fact that the respondents believe the appellants may only bring a breach of contract claim does not govern this Court's decision. Instead, what is important is that the appellants verified their complaint and submitted several pieces of evidence, including entire deposition transcripts, which support the appellants' claims for breach of contract accompanied by fraudulent act, violation of the South Carolina Unfair Trade Practices Act, and other causes of action. Even if the respondents were right, which they are not, the appellants asserted an equitable cause of action by alleging unjust enrichment. It cannot seriously be argued that that the respondents were not unjustly enriched by selling a wedding date for thousands of dollars, doubling the price (a breach by the respondents) when an international emergency made the wedding that was purchased impossible, threatened the appellants with legal action if they would not cave to the price increase, and then kept the money after performing none of the services purchased. It should not be ignored that, during the time between the pandemic rendering the wedding impossible and the breakdown of the relationship, Respondent Ashley Black allowed all feasible dates for the following year to be booked, despite telling the appellants she would find alternate dates while dates were still available (another example of deception).

The respondents admit on page 10 of their brief that the appellants state multiple duties in their verified complaint, then argue the appellants have not submitted evidence showing breach of those duties and proximately caused damages. This suggestion ignores the entire deposition transcripts, verified complaint, emails, and text messages which show deception, coercion, and threats made by the respondents, including specific acts after the contract was executed. Examples include Respondent Ashley Black's false promise to find suitable dates for the following year,

allowing all feasible dates to be lost and Respondent Ron Hakala unilaterally doubling the price of the wedding and threating the appellants with his "legal team," which caused stress to an already stressed-out couple. All of this and more has been alleged and is supported by the evidence submitted, and the appropriate factfinders, the jury, may return a verdict for the damages proximately caused by the respondents' breaches.

III. The appellants alleged specific facts and supported their claims with ample evidence.

The respondents state on page 13 of their brief that the appellants' verified complaint does not state specific facts and the appellants have not submitted evidence to support their claims. This ignores all the specific facts described in the verified complaint, including the appellants' allegations that the respondents made false and misleading statements. By way of example, paragraph 21 of the verified complaint reads:

> 21. On **September 26, 2020**, the plaintiffs informed the defendants of the plaintiffs' concerns which had developed since the **July 29 conversation**. **Specifically**, the plaintiffs told the defendants that they repeatedly attempted to contact the defendants to reschedule their wedding, and that they became increasingly concerned that they would be unable to reschedule due to the delay. **The plaintiffs expressed their disappointment in the defendants' failure to communicate with the plaintiffs after the defendants assured the plaintiffs they could reschedule the wedding**. The plaintiffs also expressed their alarm at **the defendants' sudden increase in price**. As a result of the defendants' conduct, the plaintiffs requested that the wedding be cancelled rather than rescheduled and that they receive a refund for the amount paid to the defendants. (Emphasis added).

(R. p. 21, ¶ 21).

Many of the paragraphs of the verified complaint contain what is contained in Paragraph 21: specific dates, specific conversations, descriptions of lack of communication despite the respondents' misleading statement on which the appellants relied, and the respondents' breach in unilaterally doubling the wedding price. The respondents' statements on page 13 of their brief also

ignore the entire deposition transcripts submitted that show the respondents mislead the appellants, did not do what they promised to do, and that their tortious conduct was their routine business practice. The trial court previously denied the respondents' motion to dismiss because the appellants stated all elements of the causes of action contained in the verified complaint and stated specific facts supporting the causes of action.

IV. The appellants have submitted evidence supporting the allegations of the complaint, and several fact questions exist for a jury.

Some examples of fact questions for a jury's determination include:

1. Was the thing contracted for – a wedding to include dozens of guests from Germany – made impossible by the pandemic and travel restrictions?
2. Was the thing contracted for – a wedding to include nearly 200 guests – made impossible by government mandated limitations on the number of people able to attend weddings and other events?
3. Did the respondents breach the contract between the parties by unilaterally increasing the price of the wedding, nearly doubling the price?
4. Did Respondent Ron Hakala lead the appellants to believe he would work with them should any problem arise in the future only to get a sale, with no intention of following through, and then refuse to reasonably work with the appellants?
5. Did Respondent Ashley Black mislead the appellants by assuring them she would help find an alternate date only to appease the appellants, then do nothing to find an alternate date for nearly two weeks, allowing all viable dates to be booked for the following year?

6. Does Respondent South Wind Ranch engage in deceptive and unfair business practices, as established by Respondent Ron Hakala's individual testimony and his testimony as a SCRCP 30(b)(6) witness?
7. Were the respondents unjustly enriched by accepting money in exchange for a very specific kind of wedding that the pandemic rendered impossible and then refusing to return any of the money, despite impossibility of performance?
8. Did Respondent Ron Hakala make dishonest, self-serving statements by repeatedly telling the appellants he would "work with" them, while simultaneously telling them he refused to return many customers' deposits, despite the impossibility of having their weddings, that he would not return the appellants' money, even though the wedding they paid for was impossible, and that he would double the price of the wedding for which the appellants had already paid a deposit?
9. Are there important omissions and ambiguities in the contract, like whether the respondents may unilaterally double the contract price, which must be construed against the respondents as drafters of the contract?

V. The trial court's ruling leaves the appellants without a remedy.

The respondents have repeatedly argued the merits of their defense, and that is fine, but the Seventh Amendment of the United States Constitution, Article I, §14 of the South Carolina Constitution, Rule 56, *SCRCP*, and *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009) all require them to make that argument to a jury. This case is teeming with both fact questions and evidence – sworn testimony and documentary evidence – that supports the appellants' causes of action. The trial court's ruling is simply not in line with the law related to summary judgment in South Carolina.

Even if the respondents' argument that a breach of contract claim is more appropriate than the causes of action pleaded by the appellants were true, the law still requires a jury to determine the fact questions of this case. Fact questions about mutual assent, performance, and breach must be answered by a jury. The trial court, instead of a jury, made factual determination of whether there was fraud in the making of the contract, whether there was a breach of the contract, who breached the contract, whether retention of money paid for something impossible was allowed under the contract, whether the respondents were allowed to unilaterally double the price originally contracted for, whether the respondents' actions were unfair and deceptive, whether the respondents' unfair and deceptive conduct is capable of repetition and affects the public, and other fact questions appropriate only for a jury.

CONCLUSION

Because the trial court's ruling is at odds with *Hancock* and its progeny and violates the state and federal constitutions, the appellants respectfully request that this court reverse the trial court's grant of summary judgment and remand this case for trial.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Appellants' Final Reply Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that on this date, August 9, 2023, I filed the foregoing Appellants' Final Reply Brief with the South Carolina Court of Appeals via electronic filing, to ctappfilings@sccourts.org and a bound copy via U.S. Mail. A copy was also served on Respondents via electronic service, addressed to the attorney of record below:

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