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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable James B. Jackson, Jr., Master-In-Equity

Case No. 2019-CP-38-00416

Appellate Court Case No. 2023-000513

Cemetery Equity Solutions, Inc.....Appellant,

v.

Jeffrey Wideman.....Respondent.

FINAL BRIEF OF APPELLANT

November 17, 2023

s/ Christina M. Brown

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN FAILING TO CONSIDER ALL OF APPELLANT'S PAYMENTS TO RESPONDENT FOR THE ENTIRETY OF THE CONTRACT, SUCH THAT APPELLANT WAS DEPRIVED OF \$48,950 IN MONIES PAID?

STATEMENT OF THE CASE

On July 5, 2017, the parties, Cemetery Equity Solutions, Inc. (hereinafter “Appellant” or “Defendant”) and Jeffrey Wideman (hereinafter “Respondent” or “Plaintiff”) contracted for maintenance services to be performed by Respondent for two cemeteries: Memorial Gardens of Columbia located in Richland County and Forest Lawn Memorial Park located in Kershaw County. The fee for this service to be paid by Appellant was to be \$1,200.00 weekly, the first of which to be written on July 14, 2017. (Plaintiff’s Exhibit 1 – Memorial Gardens & Forest Lawn Contract; ROA 112).

On August 21, 2017, the parties entered into another contract for the same maintenance services to be provided at two additional cemeteries. The first payment for this contract was to be written August 25, 2017. (Plaintiff’s Exhibit 2 – Belleville Memorial Gardens & Crestlawn Memorial Cemetery; ROA 113).

Each contract also contained an Addendum, which provided that the Respondent was to receive additional compensation for performing services related to opening and closing gravesites. (Plaintiff’s Exhibit 3 – Memorial Gardens & Forest Lawn Addendum; ROA 114) (Plaintiff’s Exhibit 4 – Belleville Memorial Gardens & Crestlawn Memorial Cemetery Addendum; ROA 115). Payments pursuant to the Addendums were made pursuant to an invoice system. (Transcript P. 12, line 11 – P. 13, line 21; ROA 39-40).

Initially, Respondent was being paid for maintenance services performed pursuant to the contracts; however, Respondent testified that after a person named Kathy passed away, Appellant stopped paying him. (Transcript P. 8, line 14 – P. 9, line 2; ROA 35-36). Accordingly, on March 26, 2019, Respondent brought claims related to alleged breach of contract by Appellant, claiming he was owed \$71,600.00 by Appellant. (Summons and Complaint ¶ 16; ROA 19).

On May 22, 2019, Appellant answered and admitted that the parties had entered into the relevant contracts but denied that the Respondent was owed the amount claimed. (Answer ¶ 10; ROA 26). The case proceeded to a bench trial before the Honorable James B. Jackson, Jr. on October 12, 2022, who ultimately entered judgment in favor of Respondent in the amount of \$65,750.00 on December 15, 2022. Appellant filed a Motion to Alter or Amend the Judgment on December 20, 2022, alleging, among other things, two key errors made by the trial court:

1. The order erroneously and improperly found that the dispute over the contract was limited to the dates of November 3, 2017 to September 7, 2018, and such finding was not alleged in the pleadings, supported by any documentary evidence, assumes facts not in evidence, and is directly contrary to the testimony of all parties that the contracts existed between August 2017 to September 2018; and
2. That the order erroneously and arbitrarily deviates from the pleadings in examining only a portion of the term of the contracts with the result that the Defendants were deprived of credits for payments made in the amount of \$50,550.00.

(Motion to Alter or Amend ¶¶ 4 & 5; ROA 12-13).

Respondent denied these were errors in its response filed January 20, 2023 and asserted that (1) the contractual period was between August 2017 – September 2018; however, that issues did not arise with payment until November 2017¹; and (2) that the Court gave Appellant proper credit for payments rendered and asserts that Appellant failed to produce adequate evidence to assert it was deprived of credits for payments in the amount of \$50,550.00. (Plaintiff's Answer to Defendant's Motion to Alter or Amend ¶¶ 4 & 5; ROA 14-15).

¹ There is no testimony in the record reflecting when “issues with payments” actually began. According to the chart provided by Respondent, the first “missed” maintenance payment occurred on 2/2/2018 and the first “missed” invoice related to opening and closing of gravesites occurred 12/28/2017) (Plaintiff's Exhibit 5, P.4; (ROA 119); Plaintiff's Exhibit 6, P. 5; ROA 131).

The Court denied Appellant’s Motion to Alter or Amend the Judgment without a hearing on February 28, 2023, and found:

[T]he dispute over payments made pursuant to the contracts for regular services was limited to the dates of November 3, 2017 to September 7, 2018 and the contracts for additional services was limited to October 7, 2017 to September 23, 2018. The court also found that no money was owed to the Plaintiff from the beginning of the contract to the above dates since he presented no evidence otherwise. Additionally, there was no evidence presented of any overpayments made during this time. As a result, the Court did consider the full extent of the contracts in question. This is consistent with the testimony of Plaintiff’s witness that invoices were properly paid at the beginning of the contracts.

(Order on Reconsideration ¶ 4; ROA 2). This appeal followed on March 29, 2023.

STANDARD OF REVIEW

“An action for breach of contract seeking money damages is an action at law.” *56 Leinbach Investors, LLC v. Magnolia paradigm, Inc.*, 411 S.C. 466, 471, 769 S.E.2d 242, 245 (Ct. App. 2014). “On appeal of an action at law, [the court of appeals] will affirm the master’s factual findings if there is any evidence in the record which reasonably supports them.” *Id.* However, “an appellate court may determine questions of law with no particular deference to the trial court.” *Estate of Tenney v. South Carolina Dept. of Health and Env’t Control*, 393 S.C. 100, 105, 712 S.E.2d 395, 397 (2011).

ARGUMENT

I. THERE IS NO EVIDENCE IN THE RECORD SUPPORTING THE TRIAL COURT’S FINDING THAT THE TIME PERIODS OF THE CONTRACTS AT ISSUE BEGAN ON 10/7/2017 AND 11/3/2017.

The trial court erroneously found:

The Plaintiff’s records begin in November of 2017 and the Defendant’s records begin July of 2017. As a result, the Court begins its investigation on November 3, 2017 and ends it on September 7, 2018 as to the regular maintenance of the cemeteries, which was paid at a rate of \$2,400.00 per week. As to additional services for opening and closing graves, the Court begins its review on October 7, 2017 and ends on September 23, 2018. This allows the Court to compare “apples to apples”

in regards to the evidence presented. Additionally, the Court finds that the contracts were paid in full as of the beginning dates since that is when Plaintiff's evidence starts.

(Trial Court Order dated 12/15/2022 P. 3-4; ROA 5-6).

The trial court's finding is based on arbitrarily picking the earliest dates out of the two respective tables created by the Respondent. (Plaintiff's Exhibit 5 – Maintenance Table); ROA 116-126; (Plaintiff's Exhibit 6 – Opening and Closing Graves Table; ROA 127-145). However, the court did not consider the full testimony surrounding those exhibits.

Mrs. Wideman was Respondent's bookkeeper. (Transcript P. 20, lines 20-21; ROA 47).

With respect to the Maintenance Table, she testified:

These are the spreadsheets that I compiled out of the receipts, the invoices that we originally had, **the original invoices, to put them all into one place** together, the ones that I was still able to get the invoice books. And so I compiled them into a spreadsheet to show basically where the service took place at.

(Transcript P. 21, lines 14-20; ROA 48) (emphasis added). With respect to the Opening and Closing Graves Table, Mrs. Wideman testified, "this is the spreadsheet that I compiled once again **from the invoices, the original invoices to put them in one place** on the burials that Mr. Wideman performed." (Transcript P. 24, lines 3-5; ROA 51) (emphasis added).

Simply because the only records Mrs. Wideman had began on 10/7/2017 and 11/3/2017, respectively, that does not mean there were no other monies paid by Appellant for the duration of the contract. Nada Fisher, Appellant's accounting representative, testified that the total amount of payments made to Jeffrey Wideman was \$182,450.00 (Transcript P. 65 lines 5-11; ROA 92; P. 68 lines 2-13; ROA 95). This is consistent with the Custom Transaction Detail Report entered into evidence by Appellant, which illustrates **all** payments made to Jeffrey Wideman during the entirety of the contract, which began on July 14, 2017 and is consistent with the terms of contract itself. (Defendant's Exhibit 4 – Custom Transaction Detail Report; ROA 290-295; Plaintiff's Exhibit 1;

ROA 112). Critically, this is the only evidence the trial court had to rely on in determining the total amount of monies paid to Respondent, given that the only evidence submitted by Respondent began in October and November of 2017. Therefore, the trial court erred in finding that the time periods at issue began on 10/7/2017 and 11/3/2017.

II. BY EXAMINING ONLY A PORTION OF THE TIME PERIODS FOR THE CONTRACTS AT ISSUE, APPELLANT WAS DEPRIVED OF CREDIT FOR PAYMENTS MADE TOTALING \$48,950.00.

It is undisputed that the contracts between the parties existed between July/August 2017 to September 2018. (Defendant's Answer ¶ 5; ROA 26; Plaintiff's Exhibits 1 & 2; ROA 112-113). Further, the only evidence showing the total amount of payments made to Respondent for the duration of the contract from July/August 2017 to September 2018, was the Custom Transaction Detail Report, which showed payments made in the amount of \$182,450.00. (Transcript P. 68 lines 2-13; ROA 95); (Defendant's Exhibit 4 – Custom Transaction Detail Report; ROA 290-295).

According to the only evidence representing the total amount of monies claimed due by the Respondent, which were the charts provided by Mrs. Wideman, the total amount of monies that should have been paid was \$199,250.00. (Plaintiff's Exhibits 5 & 6; ROA 116-145). According to the only evidence in the record supporting the total amount of monies paid to Respondent, Appellant paid \$182,450.00 (Transcript P. 65; lines 5-11; ROA 92; P. 68 lines 2-13; ROA 95). The difference in these two figures is \$16,800.00. Accordingly, the trial court erred in entering judgment in the amount of \$65,750.00 and should have entered judgment in the amount of \$16,800.00.

CONCLUSION

By examining only a portion of the time periods for the contracts at issue, the trial court erred, which resulted in an excess judgment in the amount of \$48,950.00. Accordingly, for the

reasons set forth above, Appellant respectfully requests that the master's order be reversed, and the case be remanded for an entry of judgment of \$16,800.00.

November 17, 2023

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