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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 Bentley Price, Circuit Court Judge

Appellate Case No. 2023-000294

RONALD SOLES,Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC,Defendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is theAppellant.

FINAL BRIEF OF APPELLANT

W. Benjamin McClain, Jr., Esquire
W. Benjamin McClain, Jr., L.L.C.
Attorney at Law
S.C. Bar No.: 3740
2728 Poinsett Highway
Greenville, S.C. 29609
Mailing Address: P.O. Box 205
Greenville, S.C. 29602
Telephone: (864) 271-9097;
(864) 271-9098
Facsimile: (864) 271-9099
Email: mcclaiwnb@gmail.com
Attorney for the Appellate Jason Brockman

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STATEMENT OF THE ISSUES ON APPEAL:

- (I.) The Court erred in granting the Respondent's Proposed Order For Plaintiff's Motion For Summary Judgment Against Defendant Jason Brockman d/b/a JNJ Transport, LLC dated March 1, 2023.
- (II.) The Court erred in its Order Denying The Defendant's, Jason Brockman's, Motion To Reconsider dated February 28, 2023.
- (III.) The Court erred in denying the Appellant's Motion For New Trial; In The Alternative, Motion To Amend/Alter Judgment Under SCRCP 59(a)(2) and 59(e); & Motion To Set Surety And Stay Enforcement Of The Order dated March 23, 2023.
- (IV.) The Court erred in granting the Respondent's Motion To Enforce The Court's Order Of March 23, 2023, And To Impose Further Sanctions dated April 04, 2023; and The Court erred in its Form 4 Order holding the Appellant in contempt of Court dated April 20, 2023.

STATEMENT OF THE CASE:

This action was commenced by the filing of the Respondent's Complaint dated September 30, 2022, and served upon the various Defendants. The Complaint alleges ten, (10), causes of action. The Appellant duly filed and served his Answer And Counterclaim, and the Respondent filed and served a Reply. Various Motions were filed and served by both Parties to this action resulting in an Order entitled "Proposed Order for Plaintiff's Motion For Summary Judgment" dated March 1, 2023, an Order entitled "Order Denying Defendant's Motion For Reconsideration: dated February 28, 2023, an Order entitled "Motion To Enforce Court Order from March 23, 2023, dated April 4, 2023, and an Order entitled "Defendant in Contempt Of Court" dated April 20, 2023. These Orders are under appeal.

STANDARD OF REVIEW:

Rule 56 of the SCRCP.

ARGUMENT:

(I.) The Court erred in granting the Respondent's Proposed Order For Plaintiff's Motion For Summary Judgment Against Defendant Jason Brockman d/b/a JNJ Transport, LLC dated March 1, 2023.

Although a Party seeking summary judgment cannot rest upon the Party's mere allegations in the pleadings for a Motion For Summary Judgment Rule 56 SCRCF, genuine issues of fact do, indeed, exist from a perusal of the Respondent's Complaint and the Appellant's Answer And Counterclaim. This same Proposed Order specifically states that the findings of fact by the trial Court are based upon the trial of the issues, evidence, applicable law, and testimony in ruling in the favor of the Respondent. There was no trial of the issues, no testimony, and no evidence, except for a few documents, and the applicable law clearly is governed by Rule 56 of the SCRCF. This, of course, requires that there is no genuine issue of fact for a jury. In the Proposed Order, itself, the trial Court relied partially on ground number 2 therein, that the Appellant, "retained possession of Plaintiff's vehicle and did not deliver the vehicle as contracted." This is untrue. Throughout the Motions, transcripts of arguments, and the record in this matter, it is uncontroverted that the Appellant retained possession of the Respondent's vehicle because the Respondent, who was at fault, created the controversy, which is the subject of this appeal. However, the question of possession, as well as whether a contract existed between these Parties is clearly a jury issue. Yet paragraph 5. FEES of the contract, (Terms And Conditions – Linus Auto Transport), clearly states that "[t]he total fee is due in two installments, the first due when Linus Auto Transport designates a Carrier to transport your Vehicle (the "Initial Payment") and the balance due when your Vehicle is delivered (the "Remaining Balance"). Whether the vehicle is delivered and payment was

made at the appropriate time and whether or not any of this provision is controverted is a genuine issue of fact in and of itself. Paragraph b. of this same Proposed Order, concerning any discovery of any damages to the vehicle was clearly not addressed, which leaves an undetermined issue of fact, which is also for a jury. Thus, these examples, as well as other examples of genuine issues of fact are rife in the Motions, and, therefore, the granting of the Respondent's Motion For Summary Judgment are clearly an error by the Court. Rule 56 SCRPC.

(II.) The Court erred in its Order Denying The Defendant's, Jason Brockman's, Motion To Reconsider dated February 28, 2023.

Clearly, the Court failed to take into account that the evidence of the true identity of the owner of the vehicle was not made available to the Appellant, especially since the vehicle was titled in an individual's name other than the Respondent. Since the Respondent did not make this known until after proceedings had been filed in this Court this is new evidence, which could not have been discovered at trial because it was never raised and was unknown to the Appellant until after these proceedings had been initiated. In fact, the Respondent had to have known that the title to the vehicle was not in the Respondent's name, and this is actually not only a fraud on the Court, but also became an issue for a jury. Furthermore, since no discovery had been served in this case, and, therefore, the ruling on summary judgment was premature. Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Barid v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Baugham v. American Tel. & Co.*, 306

S.C. 101, 112, 410 S.E.2d 537, 543 (1991) In addition, the final sentence on page 2 of this Motion For Reconsideration addresses an issue not presented to the Court, and, once again, summary judgment is not appropriate in this case and the Appellant's Motion To Reconsider should have been granted by the trial Court.

(III.) The Court erred in denying the Appellant's Motion For New Trial; In The Alternative, Motion To Amend/Alter Judgment Under SCRCP 59(a)(2) and 59(e); & Motion To Set Surety And Stay Enforcement Of The Order dated March 23, 2023.

Clearly, either or both of these Motions should have been granted. The discovery that the vehicle record shows that Evelyn Soles owns the motor vehicle at issue in the lawsuit changes the whole posture of the case. Since the Respondent is not the titled owner of the vehicle, not only does the Respondent lack standing to bring this action, but also the trial Court lacked subject matter jurisdiction of this case. Jurisdiction can be raised at any time even during an appeal, and the Appellant now raises this issue of jurisdiction, which would not only be dispositive in this case but justify the granting of a Rule 12(b)(1) Motion. The Respondent also sued the owner of the LLC, rather than the LLC. Thus, there is no jurisdiction over the Appellant, and for reasons hereinafter set forth, there is no jurisdiction over these Parties Rule 12(b)(2) SCRCP. Nor is Rule 19 SCRCP satisfied since the true titled owner of the vehicle is a necessary and indispensable Party to this action. There is no contract between these Parties. The contract was between Linus Auto Transport and the Respondent.

Obviously, a surety is appropriate in this case due to, inter alia, the disputed facts of this case, which also make the granting of the summary judgment against the Appellant inappropriate. South Carolina Code § 8-9-150 (1976), as amended.

(IV.) The Court erred in granting the Respondent's Motion To Enforce The Court's Order Of March 23, 2023, And To Impose Further Sanctions dated April 04, 2023; and The Court erred in its resulting Form 4 Order holding the Appellant in contempt of Court dated April 20, 2023.

Since the prior Orders of the Court were clearly in error, and since the Motions brought by the Appellant were not "frivolous" and were not "solely for the purposes of delay", this Motion should not have been granted. The attorney, herself, for the Respondent announced to the Court the settlement negotiations, (which are inadmissible), that good faith efforts had been made by the Appellant and the Respondent to settle this case. Appellant, Jason Brockman, has made a good faith settlement offer in this case to resolve this matter fully, allow the Respondent to take immediate possession of the vehicle and in the interest of judicial economy, resolve this matter and dismiss the pending appeal. The Appellant's settlement offer allows the Respondent to immediately retrieve the vehicle from Appellant's storage facility in Greer, S.C. Additionally, Respondent would pay the Six Hundred and Fifty (\$650.00) pursuant to Judge Price's Order, the Parties would consent to the dismissal of the action and of the pending appeals, and both Parties would stipulate that the contempt Order against Mr. Brockman should be dismissed, with prejudice, with the Court making no further findings against the Appellant, Jason Brockman. As a consequence of the dismissal, Appellant would owe no attorney fees or sanctions to Respondent Soles. Each Party would be responsible for their attorneys' fees and costs, and Judge Bentley would be notified prior to the contempt hearing. Appellant's offer was rejected by Respondent Soles by and through his counsel. The counteroffer made by the Respondent was that the Respondent would be willing to pick up the vehicle but would proceed with the sanctions hearing, and all relief sought. At the time of this filing, Respondent's counsel had not accepted

offers to further negotiate this matter. None of this was considered by the trial Court. This also proves the lack of frivolity of the Appellant, who should not have been ordered to pay attorney's fees and costs by the trial Court. Despite the inherent contempt powers of the trial Court, the proper vehicle for an alleged contempt action is an Order And Rule To Show Cause. If the Respondent wants to, "enforce the judgment" there are other proper legal mechanisms to enforce an Order of the trial Court.

There is no ground or reason why the Appellant was held in contempt of Court, in light of the circumstances, which were created by the Respondent, and, therefore, were no fault of the Appellant. Neither is there any ground for the Respondent to recover attorney's fees from the Appellant. There is no frivolity of the Appellant in the record of this case, nor was there any wrong or defiance of the Court's previous Orders by the Appellant. There is no evidence of the Appellant's willingly being in contempt of Court. The Appellant merely presented his defense to the Court, which a litigant and his advocate are entitled to do. Therefore, the trial Court erred in holding the Appellant in contempt.

Conclusion:

The Respondent started this controversy and is entitled to nothing, except for his vehicle, from the Appellant. The Appellant incorporates herein, as fully as if set forth herein verbatim the memoranda submitted by the Appellant to the trial Court.

Respectfully submitted,

Dated: December 1st, 2023
Greenville, South Carolina

s/Ward Benjamin McClain, Jr.
W. Benjamin McClain, Jr., Esquire

W. Benjamin McClain, Jr., L.L.C.
Attorney at Law
S.C. Bar No.: 3740
2728 Poinsett Highway
Greenville, S.C. 29609
Mailing Address: P.O. Box 205
Greenville, S.C. 29602
Telephone: (864) 271-9097;
(864) 271-9098
Facsimile: (864) 271-9099
Email: mcclaiwnb@gmail.com
Attorney for the Appellate Jason Brockman

Other Counsel of Record:
James Stone Craven, S.C. Bar No.: 69847
Attorney at Law
600 E. Washington, Suite 612
Greenville, SC 29601
Telephone: (864) 729-8722
stoney@stoneycraven.com
Attorney for Respondent

Adam C. Bach S.C. Bar No.: 74885
Emily R. Godwin S.C. Bar No.: 103708
TONNSEN BACH LLC
1306 South Church Street
Greenville, S.C. 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@tonnsenbach.com
egodwin@tonnsenbach.com
Attorneys for Defendant Ioan Gherman
d/b/a USA Auto Transport, LLC

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant’s Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

Respectfully submitted,

Dated: December 1st, 2023
Greenville, South Carolina

s/Ward Benjamin McClain, Jr.
W. Benjamin McClain, Jr., Esquire
W. Benjamin McClain, Jr., L.L.C.
Attorney at Law
S.C. Bar No.: 3740
2728 Poinsett Highway
Greenville, S.C. 29609
Mailing Address: P.O. Box 205
Greenville, S.C. 29602
Telephone: (864) 271-9097;
(864) 271-9098
Facsimile: (864) 271-9099
Email: mcclaiwnb@gmail.com

Attorney for the Appellant, Jason Brockman

Other Counsel of Record:
James Stone Craven, S.C. Bar No.: 69847
Attorney at Law
600 E. Washington, Suite 612
Greenville, SC 29601
Telephone: (864) 729-8722
stoney@stoneycraven.com
Attorney for Respondent

Adam C. Bach S.C. Bar No.: 74885
Emily R. Godwin S.C. Bar No.: 103708
TONNSEN BACH, LLC
1306 South Church Street
Greenville, S.C. 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@tonnsenbach.com
egodwin@tonnsenbach.com
Attorneys for Defendant Ioan Gherman
d/b/a USA Auto Transport, LLC