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Dec 29 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
In The Circuit Court

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2023-001089

ROBERT F. GOOREY,

Appellant,

v.

DEBORAH A. GOOREY and
SHAWN GOOREY,
of whom SHAWN GOOREY is the

Respondent.

INITIAL BRIEF OF APPELLANT

John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731
803 324-8100
Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

I. IS THERE EVIDENCE OF A TRIABLE ISSUE OF MATERIAL FACT IN THIS CASE?

STATEMENT OF THE CASE

The Defendant Deborah A. Goorey is the ex-wife of Appellant Robert F. Goorey; Shawn Goorey is the son of that marriage.

Robert Goorey maintains that he and Shawn Goorey entered into an agreement for the purchase of real property to be occupied by Robert as his home and held in the name of Shawn Goorey. He alleges that the purpose of the agreement was to give him a permanent home, in light of his retirement, his disability and his limited resources.

Pursuant to this agreement, the Robert Goorey advanced monies to his son toward the purchase of certain real property and undertook to pay monthly sums representing one-half of the purchase mortgage payments, cable and electric. He alleges the amount advanced to have been \$35,000.00. He alleges that partial proof of those payments and the terms of the parties' agreement are set out in text messages from Shawn Goorey incorporated in his Complaint.

Shawn Goorey denies any agreement to provide Robert a permanent home, and alleges that the incorporated text messages reference a different property than that in this action.

Robert alleges that, without his knowledge, Shawn Goorey assigned the certain real property to his mother, Deborah Goorey. Deborah advanced monies toward the purchase of that property, and the same was titled in her name.

Since at least March, 2020, Deborah has made demands that Robert vacate the property, and claimed in a series of eviction actions that he is simply her "tenant" at that address. Those demands were accompanied by Deborah's promise to refund the sums advanced for purchase by Robert.

Robert has, throughout his presence on the property, proffered sums toward expenses as agreed between the parties.

In response to the Motion of Shawn Goorey, the Circuit Court granted summary judgment to that Defendant by Order filed June 30, 2023. The Appellant's Rule 59 Motion was denied. This appeal followed.

STANDARD OF REVIEW

An appellate court reviews the grant of Summary Judgment under the same standard applied by the Trial Court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).¹ The Trial Court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), S.C.R.C.P.; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

A Court considering Summary Judgment makes neither factual determinations nor considers the merits of competing testimony. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5. (2006). In ruling on a motion for summary judgment, the Court must construe all ambiguities, conclusions, and inferences arising in and from the evidence most strongly against the moving party. *Glasscock, Inc. v. US Fidelity & Guar.*, 348 S.C. 76, 80, 557 S.E.2d 689, ___ (Ct.App. 2001)

However, Summary Judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, *SUPRA*. To survive a motion for Summary Judgment, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. *Steele v. Rogers*, 306 S.C. 546, 552, 413 S.E.2d 329, 333 (Ct.App. 1992).

ARGUMENT:

This matter concerns a declaratory judgment as to the existence and enforceability of an alleged oral contract. The Statute of Frauds, S.C. Code § 32-3-10 states, in relevant part:

No action shall be brought whereby:

...

¹ This paragraph is quoted, with stylistic changes only, from *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826, 829 (Ct.App. 2009).

(4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them;

...

Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

As recognized in *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct.App. 1987) and recited below, in cases where equitable grounds exist, such and oral contracts are enforceable.

In its Order of June 30, 2023, the Circuit Court granted summary judgment to the Defendant Shawn Goorey, holding in relevant part:

10. It is undisputed that a writing exists containing the essential elements of the oral contract alleged by the Plaintiff. Plaintiff attempts to circumvent the Statute of Frauds by contending that the agreement to purchase the Property is reflected in the text messages between himself and Shawn attached to the Complaint. However, the text messages referenced by Plaintiff relate to a different property containing 13.6 acres. The Property at issue in this lawsuit contains only 3 acres. Even if Plaintiff's allegations are taken as true and the text messages memorialize the alleged agreement, the text messages do not satisfy the Statute of Frauds because the parties never purchased the 13-acre property that is detailed in the writing.

[RECORD ON APPEAL, p.____; *emphasis added*.]

This is a jury case. In dealing with a Motion for summary judgment, the applicable precedent governing a grant of that relief is clear.

When determining whether triable issues of material fact exist, the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party.

[*See, e.g., Doe 2 v. Citadel*, 421, S.C. 140, 145, 805 S.E.2d 578, 581 (Ct.App. 2017); *reh'g denied* (Sept. 2, 2017), *cert. denied* (Mar. 28, 2018).]

In this case, the Appellant rested upon his verified Complaint. That use of a verified Complaint as the response of the nonmoving party was recognized by our Supreme Court in *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

The Appellant's verified Complaint stated, in relevant part:

6. Pursuant to this agreement, the Plaintiff advanced the sum of Thirty-Five Thousand and no/100 (\$35,000.00) Dollars to his son toward the purchase of the below described real property and undertook to pay monthly sums representing one-half of the purchase mortgage payments, cable and electric. Partial proof of those payments are attached hereto and incorporated herein as Exhibit A.
7. These terms are set out on copies of texts between the Plaintiff and his son, some of which are attached hereto and incorporated herein as Exhibit B.

[RECORD ON APPEAL, p.____; *emphasis added*.]

By his Affidavit, Shawn Goorey claims that the documents cited referred only to another piece of property. [RECORD ON APPEAL, p.____; *emphasis added*.] By his verified Complaint, Robert alleges that those documents show a pattern of dealing and, by the second text in Exhibit B, a final statement of payments required of him as to the property in question.

The question before the Circuit Court was whether a triable issue of material fact existed. The existence of such an issue is determined by a view of the evidence and all reasonable inferences in the light most favorable to the Appellant as the nonmoving party.

By the standard stated above, and in simple logic, the Order of the Circuit Court fails. The Appellant has adequately shown a factual dispute as to the property intended by the evidence cited in the Appellant's verified Complaint. Summary judgment has been improperly granted to Respondent Shawn Goorey.

The Appellant contends that his verified Complaint adequately sets out, or provides a reasonable inference of, the elements required of an enforceable oral contract. As stated in *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct.App. 1987):

In order to compel specific performance, a court of equity must find: (1) clear evidence of an agreement; (2) that the agreement has been partly carried into execution on one side with the approbation of the other; and (3) that the party who comes to compel performance has performed on his part, or has been and remains able and willing to perform his part of the contract. *Thomson v. Scott*, 6 S.C. Eq. (1 McCord Eq.) 32 (1825); *Scurry v. Edwards*, [232 S.C. 53, 100 S.E.2d 812 (1957)].

[*Id.*, 293 S.C. at 213-14; 358 S.C.2d at 176.]

The Appellant would further note that the reasoning set out above is that followed in the earlier case of *Leventis v. Acciardo*, 256 S.C. 437, 182 S.E.2d 726 (1971).

The presence of sufficient pleading, by a verified Complaint, again, precludes a grant of summary judgment.

CONCLUSION

Summary Judgment was improperly granted against the Appellant. There is a clear and documented factual dispute as to a material fact. The decision of the Circuit Court is premised on an improper determination of that fact. The ruling of the Circuit Court should be reversed and this matter should proceed to trial.

December 29, 2023

Respectfully submitted,

/s/ John Martin Foster
S.C. Bar No. 2086
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
Attorney for Appellant
jmfoster340@gmail.com

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CERTIFICATE OF COUNSEL

The undersigned certifies that the final Brief of Appellant complies with Rule 211(b), S.C.A.C.R.

December 29, 2023

/s/ John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731-6106
(803) 324-8100
jmfoster340@gmail.com
Attorney for Appellant

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CERTIFICATE OF SERVICE

The undersigned, counsel for Appellant in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Initial Brief of Appellant;

Designation of Matter to Be Included in the Record on Appeal; and

this Certificate of Service,

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section d(1) of the Order of the Supreme Court dealing with Electronic Filing and Service amended May 6, 2022.

Joe Terrious K. Neal
Morton & Gettys, LLC
Attorneys for Respondent Shawn Goorey
P.O. Box 707
Rock Hill, SC 29731
joe.neal@mortongettys.com

April D. Porter
Attorney for Defendant Deborah Goorey
176 Columbia Street
Chester, SC 29706
april@porterlawsc.com

December 29, 2023

/s/ John Martin Foster
S.C. Bar No. 2086
Post Office Box 106
Rock Hill, South Carolina 29731-6106
(803) 324-8100
Attorney for Appellant
jmfoster340@gmail.com