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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2023-001739

Richard Young and Jason Greene ..... Respondents,

v.

John W. Beasley a/k/a John W. Beasley, Sr.
and Lillian Beasley in their individual capacities
and as Trustees or as Successors in trust under
the Beasley Living Trust dated August 14, 2018,
and any amendments thereto.....Appellants.

REPLY BRIEF OF APPELLANTS

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January 7, 2024

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Pursuant to Rule 208(a)(3) of the South Carolina Appellate Court Rules, Appellants hereby submit this Brief in Reply. All capitalized terms used herein, unless otherwise defined in this Brief in Reply, shall have the same meanings as those provided in the Initial Brief of Appellants.

REPLY TO STATEMENT OF THE FACTS ASSERTED BY RESPONDENTS

Appellants assert the underlying factual circumstances reasonably lead to the conclusion that Respondents were extremely concerned with their inability to obtain any satisfaction from their junior lien on the Property following First-Citizens, the senior lien holder, filing an action on September 10, 2019, seeking to foreclose the mortgage on the Property. First-Citizens' action resulted in an order and judgment of foreclosure and sale on March 16, 2020. Due to First-Citizens' foreclosure action, Respondents engaged Appellants and negotiated the Second Settlement Agreement, which was executed on November 30, 2020.

However, Respondents' Initial Brief fails to address this argument and their recitation of the facts attempts to obfuscate the timeline, presumably in order to avoid these revealing circumstances. The following is a bulleted list of Respondents' statement of the facts in the order Respondents chose to present the facts:

1. "In November of 2017, Appellants, Beasley Jr. and Beasley Construction Company, LLC ("Beasley Construction") entered into a Settlement Agreement with Respondents (hereinafter "the First Settlement Agreement"), which provided for the repayment of the loans to Respondents and provided Respondents with security for the promise of payment."

2. "Appellants, Beasley Jr. and Beasley Construction failed to honor the terms of payment set forth in the First Settlement Agreement and Promissory Note resulting in the Confession of Judgment being filed on May 30, 2019."

3. "Appellants, Beasley Jr. and Beasley Construction were simultaneously experiencing financial distress with First-Citizens Bank & Trust Company ("First Citizens") in 2019, which resulted in a foreclosure action being filed on September 30, 2019 . . . . ."

4. "First Citizens was made whole through the foreclosure sale of a different property(ies) and a Satisfaction of First Citizens Order and Judgment of Foreclosure was filed on April 20, 2022, ending the First Citizens Foreclosure."

5. "In late November or early December of 2020, Appellants and Respondents entered into another Settlement Agreement and Conditional Release of Claims ("the Second Settlement Agreement")."

(Initial Brief of Respondents, pp. 4–6.)

The issue with Respondents' timeline is it could lead to the confusion that the Second Settlement Agreement was executed ***after*** First-Citizens finalized their foreclosure action resulting in its full satisfaction. However, Appellants respectfully request the Court notice the dates rather than the order of the last two bullet points:

4. "First Citizens was made whole through the foreclosure sale of a different property(ies) and a Satisfaction of First Citizens Order and Judgment of Foreclosure was filed on April 20, ***2022***, ending the First Citizens Foreclosure."

5. "In late November or early December of ***2020***, Appellants and Respondents entered into another Settlement Agreement and Conditional Release of Claims ("the Second Settlement Agreement")."

(Initial Brief of Respondents, pp. 5–6.) Clearly, the fourth and fifth bullet points need to be switched. But Respondents' version of the timeline rearranges this chronology in such a manner as to suggest the First-Citizens' foreclosure action played no role in Respondents' motivation to execute the Second Settlement Agreement. Respondents' ordering of the facts is telling, especially in light of their complete failure to address Appellants' argument that the First-Citizens' foreclosure action had everything to do with Respondents attempting to salvage whatever they could obtain before the First-Citizens' foreclosure was effectuated.

The Master-in-Equity was troubled by this issue and seemed to have been confused as to why the settlement sum was only fifty thousand dollars within the Second Settlement Agreement; indeed, the Master-in-Equity asked: "Why would [Respondents] agree to settle this case for [$]50,000 if they have $5,000,000 of security out there?" (Hearing Transcript of Sept. 27, 2023, p. 7, ll. 6–8.) However, the proper timeline of events demonstrates Respondents were extremely concerned with coming up empty-handed despite the amount of security they held, given they were

junior to First-Citizens. Thus, Respondents scrambled to obtain what was feasible at the time from Appellants, with the ability preserved to obtain accord and satisfaction from the other debtors, i.e. John W. Beasley, Jr., and Beasley Construction Company, LLC. Once Respondents realized Appellants were eventually able to satisfy First-Citizens some years later, Respondents had sour grapes that they released Appellants for fifty thousand dollars and filed the underlying action shortly thereafter. Thus, Respondents have no answer to—indeed, did not even rebut—Appellants' argument that had Respondents believed the Second Settlement Agreement only resolved the Confession of Judgment, then Respondents would have acted in the exact opposite manner in which they did.

After all, if Respondents truly believed the Second Settlement Agreement only resolved the Confession of Judgment, then they chose to settle one avenue of relief for fifty thousand dollars that required no protracted litigation, and left open the door for protracted litigation in a foreclosure action to obtain the remainder of the hundreds of thousands of dollars in debt. Such a situation is absurd. No rational party to a contract would entertain such an absurd direction. It is nonsensical why one would accept fifty thousand dollars in settlement of a Confession of Judgment, which does not require protracted litigation, and then proceed to incur thousands of dollars in attorney's fees to foreclose in an attempt to obtain the remainder of the debt, knowing protracted litigation would result. ***A rational party would do the exact opposite***, i.e. either pursue the Confession of Judgment *ex ante* for the full Debt (or as much as you could obtain), or resolve via settlement in order to obtain as much you possibly could in exchange for a full release. The latter is what occurred and Respondents asserted no arguments to the contrary. Indeed, Respondents ***completely ignored*** this point in their Initial Brief and instead engaged in a calculated re-ordering of the chronology.

REPLY TO STANDARD OF REVIEW ASSERTED BY RESPONDENTS

Respondents assert "[w]hen reviewing a judgment made in a law case tried by a master without a jury, the appellate court will not disturb the master's findings of fact unless the findings are found to be without evidence reasonably supporting them." (Initial Brief of Respondents, p. 3 (quoting *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 542 (Ct. App. 2008) (citing *Karl Sitte Plumbing Co., Inc. v. Darby Dev. Co. of Columbia, Inc.*, 295 S.C. 70, 77, 367 S.E.2d 162, 166 (Ct. App. 1988)))). This standard of review asserted by Respondents is ***not*** applicable to this appeal. The findings of fact and judgment entered by the master in the *Silver* case "[f]ollow[ed] a bench trial." *Silver*, 376 S.C. at 590, 658 S.E.2d at 541. The underlying action in this appeal never reached a trial on the merits. Instead, the Master-in-Equity disposed of the case via summary judgment, which makes all the difference.

As set forth in the Initial Brief of Appellants, when summary judgment is granted on a question of law, the appellate court ***must*** review the ruling ***de novo***. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634–35, 776 S.E.2d 434, 437 (Ct. App. 2015) (emphasis added) (citing *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). Further, "[i]n determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom ***must be viewed in the light most favorable to the nonmoving party***." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (emphasis added) (quoting *Pye v. Est. of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006), *overruled on other grounds by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021)). Based on the foregoing, this appeal must be reviewed under a *de novo* basis, with no deference given to the Master-in-Equity's findings of fact or otherwise, as Respondents suggest.

ARGUMENTS IN REPLY

I. The Dispute Regarding the Reference to and Implication of the Note and the Mortgage in the Second Settlement Agreement Should Be Resolved in Favor of Appellants.

Respondents assert "[t]here is no reference to the Note or the Mortgage contained in the Second Settlement Agreement." (Initial Brief of Respondents, p. 8.) Appellants assert the exact opposite, which demonstrates a dispute exists. Appellants' primary position is the proper interpretation of the Second Settlement Agreement, as a matter of law, holds the Note and Mortgage were both referenced and implicated, such that Appellants are either released from both and/or Appellants are entitled to a satisfaction.

However, in the alternative, as set forth in Appellants' oral argument to the Master-in-Equity as well as their Initial Brief, to the extent Respondents' dispute that the Loan referenced in the Second Settlement Agreement is the Note at issue in this case and/or that the collateral referenced in the Second Settlement Agreement is the Property that was subject to the Mortgage and that the Mortgage is referenced and implicated by the Second Settlement Agreement raise genuine issues of material facts, extrinsic evidence and testimony will be necessary to resolve the issues, sufficient to deny summary judgment. (Initial Brief of Appellants, p. 6, n.4, pp. 7–8, n.5.) Given Respondents clearly dispute these issues now, and to the extent they constitute genuine issues of material facts, denial of summary judgment is warranted and the Master-in-Equity's judgment must be reversed.

II. Respondents Are Required to File a Satisfaction of the Judgment Lien or Otherwise Release Appellants.

Respondents assert they were not required "to file a Satisfaction of the Mortgage and to either mark the Note as satisfied or release Appellants from their obligations of repayment thereunder." (*See* Initial Brief of Respondents, p. 8.) Further, Respondents go so far as to suggest

that because they "did not file a Satisfaction of the Judgment Lien, [this failure] provides further evidence that Respondents DID NOT agree to relieve Appellants of their obligations under the Note and Mortgage." (Initial Brief of Respondents p. 20 (emphasis in original).) This argument is fallacious.[1] After all, the exact opposite is far more likely to be true: Respondents could have agreed to relieve Appellants—and in fact did so relieve Appellants—and simply breached the Second Settlement Agreement by not filing a satisfaction of the judgment lien.

Respondents rely on the argument that the Second Settlement Agreement does not include "a simple provision requiring the satisfaction of [the] Mortgage" and it "would have taken a single sentence to spell out any such obligation of Respondents." (Initial Brief of Respondents, pp. 9 &

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[1] Respondents assert Appellants have attempted to "twist and contort the [Second Settlement] Agreement's unambiguous terms" and have asked the Court to engage in "mental gymnastics." (Initial Brief of Respondents, p. 18.) Contrary to Respondents' assertions, Respondents are the culpable parties engaging in this type of illogic.

Basic logic begins with a conditional statement:

If A, then B.

Applied to this context, "A" represents Respondents filing a satisfaction, whereas "B" is the agreement to relieve Appellants of their obligations. It follows the contrapositive of the conditional statement would be a logical equivalent:

If not B, then not A.

However, Respondents are engaging in the logical fallacy of denying the antecedent by arguing:

If not A, then not B.

Respondents' argument is therefore fallacious. To paint the picture more clearly, when "A" represents that one is a practicing attorney and "B" represents that one has a job, it is clear if one is a practicing attorney (A), then one has a job (B). Likewise, the contrapositive is true: if one does not have a job (~B), then one is not a practicing attorney (~A). However, denying the antecedent is not a logical equivalent: if one is not a practicing attorney (~A), then one does not have a job (~B). This proposition is clearly false, because one could have any number of other jobs besides being a practicing attorney, from an accountant to a Zumba instructor. Likewise, just because Respondents did not file a satisfaction of the judgment lien (~A) neither proves nor provides evidence there was no agreement to relieve Appellants of their obligation (~B).

15.) According to Respondents, without such an express provision, there was no agreement to satisfy the Mortgage. However, the Second Settlement Agreement sets forth that "in consideration of the payments and promises recited herein, [Respondents] fully release and forego all legal, equitable, and statutory remedies and processes available to them so long as [Appellants] fully perform all obligations hereunder." (Second Settlement Agreement, p. 2.) Because there is no dispute Appellants complied with the payment of the required settlement sum set forth in the Second Settlement Agreement, Appellants are thereby released from the Mortgage. Second, given the Debt was fully paid, Respondents were required by statutory law to file a satisfaction of Mortgage after satisfaction of the Debt. Even if not expressly referenced in the Second Settlement Agreement, South Carolina statutory law requires such satisfaction:

> Any holder of record of a mortgage who has received full payment or satisfaction or to whom a legal tender has been made of his debts, damages, costs, and charges secured by mortgage of real estate ***shall*** . . . enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

S.C. Code Ann. § 29-3-310 (emphasis added). Thus, a "simple provision" regarding filing a satisfaction was never necessary to be included in the Second Settlement Agreement, because it was already required by statute.

Based on the foregoing, Respondents are engaging in fallacious logic and "mental gymnastics." Appellants should either be released from the Debt, Note, and Mortgage based on the contractual terms or receive a satisfaction of the Mortgage based on statutory law. Either by contract or by statute, Appellants are entitled to relief as a matter of law, sufficient to reverse the summary judgment granted in favor of Respondents. In the alternative, Respondents' arguments to the contrary merely raise further disputes over genuine issues of material facts necessitating the denial of summary judgment and reversal of the Master-in-Equity's rulings.

III. An Affidavit is Not Required from Appellants Here to Defeat Summary Judgment.

Respondents argue Appellants' failure to file an affidavit or offer testimony "to contradict Respondents' Affidavit declaring Appellants were in default under the terms of the Note and Mortgage," is fatal to Appellants' claims. (Initial Brief of Respondents, pp. 10–11.) This argument is without merit. The thrust of Respondents' Affidavit simply proffers a legal conclusion that Appellants are "in default under the terms of the Note and Mortgage." (Initial Brief of Respondents, p. 10.) According to Rule 56(c) of the South Carolina Rules of Civil Procedure, an affidavit can be used to establish a genuine issue of material fact. However, here, an affidavit in rebuttal of this ***legal*** conclusion is unnecessary and would not create a genuine issue of material fact. A legal conclusion in an affidavit that is uncontested by a rebuttal affidavit does not entitle a party to automatic victory. Whether Appellants are actually in default is a legal question that must be resolved by the Court, and any an affidavit or competing affidavits (or competing pleadings for that matter) simply asserting or denying default would not provide any assistance to the Court in resolving this legal question. Further, Appellants' alternative argument that genuine issues of material facts exist arise from the written agreements and the timeline of events, without the need for an affidavit.

IV. Judicial Estoppel Is Not Applicable.

Respondents assert Appellants are judicially estopped from taking a different position in this litigation based on Appellants arguing, in the alternative, that genuine issues of material facts exist. (Initial Brief of Respondents, pp. 11–13.) However, the South Carolina Rules of Civil Procedure clearly allow for parties to assert arguments in the alternative:

> A party may set forth two or more statements of a cause of action or defense ***alternatively*** or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made ***in the alternative*** and one of them if made

> independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate causes of action or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both.

Rule 8(e)(2), SCRCP (emphasis added). This Rule is supported by ample case law as well. *See, e.g.*, *Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1167 (4th Cir. 1982) (noting "the permissible practice, now freely allowed, of simultaneously advancing in the same action inconsistent claims or defenses which can then, under appropriate judicial control, be evaluated as such by the same tribunal"); *see also United States v. Newell*, 239 F.3d 917, 921 (7th Cir. 2001) ("The making of inconsistent arguments within a single case is more common than otherwise, and closely resembles pleading in the alternative, which is allowed.").

One element of judicial estoppel is that the assertion of inconsistent positions "must be part of an intentional effort to mislead the court." *Cothran v. Brown*, 357 S.C. 210, 216, 592 S.E.2d 629, 632 (2004). The impetus of this element is because judicial estoppel is designed to prevent "intentional self-contradiction . . . as a means of obtaining unfair advantage in a forum." *Allen*, 667 F.2d at 1167 (quoting *Scarano v. Cent. R. Co. of N. J.*, 203 F.2d 510, 513 (3d Cir. 1953)). Appellants are not attempting to obtain an unfair advantage. Indeed, Appellants were upfront about arguing in the alternative and even noted on the record this type of argument Appellants were asserting:

> Your Honor, just very briefly, we would like to present a list of the genuine issues of material fact in this case. We have told you that we don't believe a genuine issue of material fact is created, but as we discussed already, there's clearly some disputes between the parties.
>
> So ***in the alternative***, those disputes would create genuine issues of material facts that would warrant a denial of their motion for summary judgement.

(Hearing Transcript of Sept. 27, 2023, p. 38, l. 19 – p. 39, l. 3 (emphasis added).) The Master-in-

Equity and Respondents were clearly on notice of the type of allowable alternative arguments Appellants were making and there was no attempt to mislead anyone. Any argument to the contrary is simply without merit.

Similarly, another element of judicial estoppel is that "the party taking the [inconsistent] position must have been successful in maintaining that position and have received some benefit." *Cothran*, 357 S.C. at 216, 592 S.E.2d at 632. Appellants never received any benefit in the underlying action from their primary position that there were no genuine issues of material fact. Summary judgment was granted against Appellants after all. Thus, because Appellants' primary argument did not inure to their benefit, Appellants are allowed to assert arguments in the alternative, pursuant to Rule 8(e)(2) of the South Carolina Rules of Civil Procedure. Respondents' resort to judicial estoppel is unavailing.

CONCLUSION

Based on the foregoing, Respondents' arguments are without merit. As set forth in their Initial Brief, Appellants have demonstrated they have satisfied the Debt and are released therefrom, which is supported and acknowledged by the executed documents in the record as well as Respondents' own actions. In the alternative, genuine issues of material fact exist warranting the denial of summary judgment and allowance for further discovery. Therefore, in addition to such other and further relief this Court deems proper, Appellants respectfully request this Court to rule as follows:

A. Reverse the Master-in-Equity's grant of summary judgment in favor of Respondents, thereby denying the same;

B. Reverse the Master-in-Equity's denial of summary judgment against Appellants, thereby granting the same, or, in the alternative, instruct the Master-in-Equity to allow for further

discovery before ruling on Appellants' Motion for Summary Judgment; and

C. Overrule the Master-in-Equity's Order and Judgment of Foreclosure and Sale and remand for further proceedings consistent therewith.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that this Reply Brief of Appellants was served on Respondents via e-mail to Respondents' counsel of record on January 7, 2024 as follows:

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