

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

Docket No. 2008-CP-40-0009

Larry A. Yates Appellant

v.

Estate of Alvin Yates Respondent

BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF THE CASE

Alvin Yates and Larry Yates had an “on-again - off again” relationship going back several years prior to the year 2000. On April 12, 2000, this relationship culminated in the filing of a Confession of Judgement with the Clerk of Court for Richland County acknowledging Larry Yates was indebted to Alvin Yates in the amount of \$ 143,978.00.

On or about July 5, 2003, Larry Yates prepared a document entitled *Project Partnership Agreement*. Under the terms of this document, Alvin Yates would purchase a parcel of land in Richland County, finance the purchase and construction of a modular home on the land; and then sell the land and home. Larry Yates would help supervise the construction of the home. Alvin Yates paid for the project by obtaining a Loan secured by a Mortgage on his personal residence, and with personal credit cards. Larry Yates contributed nothing financially to the project. The *Project Partnership Agreement* made no mention of how the profit or loss, was to be shared, how Alvin Yates would be reimbursed for his expenditures, or what the interests of Alvin Yates and Larry A Yates were. Further, the real estate which was developed under the auspices of the *Project Partnership Agreement* and the Contract for the purchase of the modular home were all titled in the name of Alvin Yates.

During the construction phase, Alvin Yates paid all bills for labor and material.

March 18, 2005, after construction was completed, an Installment Contract of Sale was executed by and between Arnold Palmer and Ida D Palmer (Purchasers) and Larry A Yates and Lyndell E Yates [Attorney in Fact for Alvin Yates] (Sellers) for the purchase/sale of the property. Alvin Yates died shortly thereafter on April 16, 2005; his

estate was probated in Lexington County. At the time of his death, the Installment Contract of Sale was still active, and the Purchasers were making monthly payments.

Prior to his death, Alvin Yates had negotiated a loan from First Citizens Bank and Trust secured with a Mortgage on the Richland County property developed under the *Project Partnership Agreement* in order to pay off the Mortgage Loan on his Personal home. The Personal Representative of the Alvin Yates Estate agreed to have the Purchaser's (Arnold Palmer and Ida D Palmer) make their monthly payments under the Installment Contract of Sale direct to First Citizens Bank and Trust. Larry A Yates received none of the monthly payment money. The Palmers thereafter made their monthly payments to First Citizens Bank.

Larry A Yates filed an action in the Lexington County Probate Court claiming (1) there existed a partnership between he and Alvin Yates and (2) he, as the surviving partner, was entitled to the property which Alvin Yates had purchased and developed. That action was dismissed by the Probate Court for Lexington County for lack of jurisdiction.

In 2008 Larry A Yates filed an action in the Court of Common Pleas for Richland County (2008-CP-40-0009) claiming (1) the existence of a partnership between he and Alvin Yates, and (2) as the surviving partner, he was entitled to the property purchased and developed by Alvin Yates. Along with his Complaint, Larry Yates also filed a *Lis Pendens* creating a cloud on the title.

The matter was heard July 13, 2009 by the Honorable J Michelle Childs, Judge, Richland County CCP&GS. The Court ruled there never existed a valid partnership

between Larry A Yates and Alvin Yates; and denied the relief sought by Larry A Yates. The action and the *Lis Pendens* were terminated. Shortly thereafter, the Personal Representative of the Estate concluded the Installment Sales Contract transaction, the mortgage with First Citizens Bank was paid off, and the property was transferred out of the name of Alvin Yates.

Larry A Yates filed a Motion for Reconsideration in Richland County November 30, 2009. This was denied due to lack of timeliness in the filing March 10, 2009.

Larry A Yates filed a Notice of Intent to Appeal with the South Carolina Court of Appeals March 15, 2010. This was dismissed April 28, 2010 due to a lack of timeliness.

Larry A Yates then filed another Motion for Reconsideration in Richland County Court of Common Pleas which was heard March 9, 2012. The Motion was denied.

This appeal followed.

ARGUMENTS

1. DID THE CIRCUIT COURT JUDGE ERR IN USING THE STANDARD OF SOUND DISCRETION IN RULING ON THE SCRCP 60(b)(4) MOTION.

The Appellant argues the Order of the Court dated October 23, 2009 (R. p. 36 - R. p. 47) is void. However, he gives no basis in fact or law for making this claim. One can only assume he considers the Order void because it was not in his favor.

The Circuit Court had jurisdiction to hear the case and to render a decision. Ross v Richland Co., 270 S.C. 100, 240 S E 2d 649 (1978). The Appellant points to no error of law, nor abuse of discretion on the part of the Court hearing the March 9, 2012, 60(b)(4) Motion which would form the basis for a reconsideration of the case. (R. p. 20 - R. p 31) Coleman v Dunlap, 306 S C 491, 413 S E 2d 15 (S.C. 1992); Tri-County Ice and Fuel Co. V Palmetto Ice Co., 303 S C 237, 399 S E 2d 779 (1990)

The appellant argues the Court hearing the March 9, 2012 60(b)(4) Motion erred in deciding the Motion based on the sound discretion of the presiding Judge. This issue was long ago decided by the South Carolina Supreme Court which ruled, barring an abuse of discretion, the appeals court should not disturb a trial courts discretionary decision on appeal. Tri-County Ice and Fuel Co., id. The trial court reviewed the record and allowed the Appellant to make his argument and present additional documentary evidence to support his claim. (R. p. 122 - R. p. 176) After due consideration, the 60(b)(4) motion was denied.

The Appellant argues the Court at the March 9, 2012 hearing of the 60(b)(4)

Motion should have conducted a *De Novo* review of the Order of October 23, 2009. This does not make sense since there is no “lower court”. When Appellant filed his 60(b)(4) Motion, he was asking the Court to review It’s own Order; not the Order of a lower Court. Therefore, there is nothing to be reviewed *De Novo*.

2. WERE APPELLANTS DUE PROCESS RIGHTS VIOLATED BY THE
RULING OF THE CIRCUIT COURT ON THE SCRCP 60(B)(4) MOTION.

Appellant argues the failure of the trial court to find in his favor on the 60(b)(4) motion denied him his right to Due Process and a Fair Trial.

No person shall be deprived of life, liberty, or property without due process of law. U S Const. Amend XIV, § 1; S C Const. Art. 1 § 3. “In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Sloan v S C Bd of Physical Therapy Examr’s, 370 S C 452, 483, 636 S E 2d 598, 614 (2006); Matthews v Eldridge, 424 U S 319, 332; 96 S. Ct. 893, 47 L. Ed 18 (1976) (recognizing that before due process [376 S C 473] guarantees are implicated, there must be a deprivation by the government of constitutionally protected interest). Moore v Moore, 376 S C 467, 657 S E 2d 743 (S C 2008).

The Appellant on July 13, 2009 had a full merits hearing, offering documentary evidence and witness testimony. At the 60(b)(4) motion hearing March 9, 2012, the Appellant again offered documentary evidence and oral argument. At neither hearing was Appellant denied the right to offer whatever proof he felt supported his case. Therefore, the sole grounds the Appellant offers as a denial of due process is the fact he lost at both hearings; and therefore the order’s of the trial court are void.

The Appellant confuses “quantity” with “quality”. He believes because he offered such a vast amount of documentary evidence, he was entitled to win the case. Being a *Pro Se* litigant he did not realize his documentary evidence had to support his claim and not

just present facts. The evidence submitted by the Appellant had to do with the construction of a modular home on the property of the Respondent; and nothing to do with an alleged partnership. There is no dispute that a modular home was constructed on the property of the Respondent, and that the Respondent paid for the property, paid for the purchase of the house, and paid for the construction of the house. Nor is there any dispute the land and the Bill of Sale for the modular were both in the name of the Respondent. (R. p. 135) There was never anything in the name of an alleged partnership between the Appellant and Respondent.

3. WAS THE TRIAL COURT'S RULING ON THE SCRCP 60(b)(4) MOTION
BASED ON SUPPOSITIONS NOT FOUND IN THE RECORD.

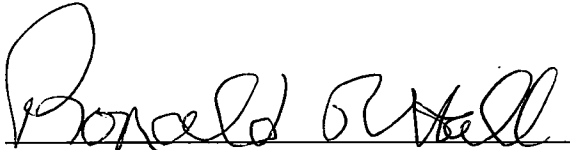
None of the items listed by the Appellant in his arguments as "suppositions not found in the trial record" formed the basis for the Order of the Court.

The trial court looked at the evidence and heard the testimony of the Appellant, then applied the tests set forth by the Court of Appeals for establishing a partnership: (1) Sharing of Profits and Losses, (2) Community of Interests in Capital or Property, (3) Community of Interest in Control and Management . Halsberg v Berry, 302 S C 97, 101, 394 S E 2d 7, 10 (Ct. App 1990). The trial court, in applying these tests to the evidence, found the Appellant's case failed to meet any of the tests; and this was the basis for the ruling of the Court, not some fanciful suppositions Appellant imagines. Further, the trial court hearing the 60(b)(4) Motion agreed with this conclusion. So two different Judges looked at the same evidence and reached the same conclusion: there was no partnership between the Appellant and the Respondent.

CONCLUSION

The Appellant failed to establish the existence of a valid Partnership between himself and Alvin Yates [Decedent] at the merits hearing, and failed to establish any grounds for reconsideration or new trial pursuant to SCRCP 60(b)(4). The ruling of the trial court should be affirmed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ronald R Hall", written over a horizontal line.

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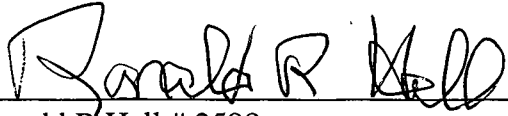
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July 21, 2013

I certify this Brief complies with the requirements of Rule 211(b).

A handwritten signature in black ink, appearing to read "Ronald R Hall", written over a horizontal line.

July 21, 2013

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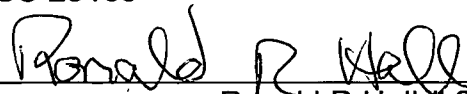
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CERTIFICATE OF SERVICE

The undersigned herewith certifies he did on the 22 Day of July, 2013, deliver a copy of the Brief of the Respondent to the Appellant by depositing a copy of the same in the U S Mail, postage prepaid, return address clearly shown upon the outside of the envelope addressed to

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