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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Master and Equity

Shannon M. Phillips, Master and Equity Judge

APPELLATE CASE NO.: 2022-001304

Kesha Petty, Appellant

v.

Cathy Biggerstaff, individually and as owner of B&B Amusement, Inc., and B&B Amusement, Inc., Respondent.

FINAL REPLY BRIEF OF APPELLANT

Kesha Petty
553 Chastine Drive
Spartanburg, SC 29301
Appellant

March 23, 2023
Spartanburg, South Carolina

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TABLE OF AUTHORITES

CASES:

Stanley Smith & Sons v. Limestone College, 283 S.C. 430, 434, 322 S.E.2d 474, 478 (Ct. App. 1984).

Niggel Assoc., Inc. v. Polo's of North Myrtle Beach, Inc., 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988).

Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989)

Sauner vs. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (S.C. 2003)

Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (S.C. App. 1984)

Bishop v. S.C. Human Affairs Comm'n (South Carolina Administrative Law Court, 2019)

Mid-South Mgt. Co. Inc., 374 S.C. 588, 598, 649 S.E.2d 135, 141 (S.C. App. 2007).

Potomac Leasing Co. v. Otts Mkt., 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App. 1987).

See Green v Duke Power Co., 305 N.C. 603, 608, 290 S.E.2d 593 (1982)

Argument in Reply

Without restating the issues or making redundant arguments which have been set forth in the opening brief, the Appellant offer the following points of clarification and rebuttal to the arguments raised by Respondents.

I. The Trial Court Err in finding that a contract/agreement existed between the parties?

Respondents argue that there was no err on the Trial Court because the Trial Court did not find that an agreement existed between the parties. Appellant disagrees as the final order from the Trial Court uses terms of an agreement that did not exist. Judge Philips' Order states the parties agreed to rent, utilities, property tax, and insurance. However, these terms were the same terms that Judge Hayes said did not exist and were not agreed to. For example, Plaintiff testified that she never agreed to the payment of property tax (Transcript, p.32), yet property tax was used in the evaluation based solely on the testimony of the Respondent, which the Appellant denied. The Trial Court continued to use terms of an agreement that was already decided that did not exist and by using these terms the Trial Court was inaccurate and prejudicial to the Appellant. Even if the Trail Court did not err in finding that an agreement existed between the parties, which Appellant denies and admits only for the purpose of this argument, the Trial Court erred in deciding which terms to use. The only tangible evidence presented as to any possible terms would be the rent check that Appellant tried to give to Respondent for \$800.00 and a check for utilities, water, and lights, which the Respondent refused due to the parties not agreeing on the terms. (See Plaintiff's Exhibit 1). There was no tangible evidence at trial to prove that the Appellant agreed to pay property taxes. The Trial Court erred in its finding that terms of an agreement existed between parties, and further in determining which terms to use in any evaluation for damages. The Trial

Court created an inconsistent finding. No inconsistent verdicts can be rendered, as the court's concern is creating a possibility that a party will be prejudicated by different juries rendering inconsistent verdicts on the same issues. See Green v Duke Power Co., 305 N.C. 603, 608, 290 S.E.2d 593 (1982). The Trial Court clearly created an inconsistent verdict on the issue of breach of contract as the Trial Court clearly did not have jurisdiction to determine whether an agreement of terms was met between the parties, which the Trial Court did, when it used terms for damages that were not agreed upon.

II. **The Trial Court Erred in Finding that Cathy Biggerstaff and B&B Amusement was unjustly enriched by the Plaintiff and that the Plaintiff owed restitution to the Defendant.**

As stated in the opening brief, Both parties stated that Appellant never got to enjoy the building for the purpose she wanted to, which was to have an event business. Appellant was thrown out before she could enjoy the property. Therefore, Respondents owe Appellant for the work completed including but not limited to labor, equipment, repairs, supplies, and fixtures to a total of \$12,253.27(See Plaintiff's exhibit 2). It was noted in the beginning of the trial that both parties stipulated to the authenticity of the handwritten labor receipts that the Plaintiff produced (See Transcript 3-4). The Trial Court erred in dismissing the validity of those receipts and not including them because they were "not collaborated." The witnesses to those receipts were dismissed because there was no question as to the authenticity of the handwritten receipts. So, for the Trial Court to not consider the handwritten receipts is very prejudicial to the Appellant.

The Trial court erroneously ruled that Appellant did in fact have a benefit from the Respondents. However, all of the evidence in this matter showed that the Appellant was at no time enriched by the Respondents. In fact, all the evidence points to the opposite. The Trial Court

disregarded all the physical evidence presented which showed at no time did the Appellant gain anything from what transpired between the parties, but instead lost. The Appellant spent thousands of dollars to repair a building she never got to use for the purpose she intended to and was not reimbursed for it. Thus, the Appellant was not unjustly enriched by the Respondents.

The Respondents mention that Appellant was in possession of the property for nine months and uses the Request for Admit as evidence of this. However, during the trial, Respondents testify that in fact Appellant was only in possession of the building until August when the keys were returned to Respondents and Appellant was longer given access to the property (See Transcript pages, 109-110, 162-163). The Respondents also state that Appellant held “events” at the property, however, testimony at trial stated the building was not completed until July, and Appellant returned the keys in August (See Transcript page 119). Appellant further testified that although she was planning to have events, no such events took place. (See Transcript page 47). Again, there was no unjust enrichment received by Appellant and the Trial Court erred in concluding that Appellant did not meet the burden.

Just for sake of argument, let’s assume the first element of unjust enrichment is not met by the Appellant, which is denied and only admitted for the sake of argument on this point, but what benefit did the Respondents confer onto the Appellant? Appellant used her credit cards to pay for the supplies and renovations that were done to the building. She also paid other people to come and help her. She wanted to use the building for a business which she never did, therefore, the Trial Court is just wrong in stating that Appellant was enriched in any way by the Respondents. Respondents allowed Appellant to clean and renovate the building without ever stopping or compensating Appellant. Respondents received a whole building renovated and no benefit was ever conferred onto Appellant. Therefore, in fact it was Respondents who has failed to meet the

first element of unjust enrichment and the Trial Court clearly erred in concluding that Appellant did not. In fact, as stated in the opening brief, Respondents fail to meet the second and third elements of unjust enrichment since Respondents conferred no benefit onto Appellant and Appellant could not have realized any value from the non-existent benefit.

Respondents went on to sell the building thus receiving all the benefit without meeting any of the requirements for unjust enrichment. Respondents argue that the property was sold “undervalued” and that there was no benefit of the work the Appellant did, however, there was no physical evidence to prove this point. The Respondents did not have any property appraisals done before or after, however, just looking at the pictures that were presented by Appellant, any reasonable person would see that the work done to the property was a benefit for the property (See Plaintiff’s exhibit 4).

The Trial Court clearly abused its discretion in this matter. Respondents further in their reply state that “the Appellant did not argue parties’ agreement on rent, utilities, and property tax” and that is simply not true as stated above. This argument was well made throughout the trial and Appellant testified throughout that she never agreed to all the terms listed.

III. The Trial Court Erred in not declaring Cathy Biggerstaff personally liable.

Appellant reiterates her argument as made in her opening brief. Appellant very clearly articulated the argument that proved that Cathy Biggerstaff acted as herself and not as an agent of B&B. Appellant testified that she always spoke with Ms. Biggerstaff as she understood as Biggerstaff as the owner of the building (See Transcript page13-14). In fact, when Appellant did try to pay Ms. Biggerstaff, she wrote the check payable directly to Cathy Biggerstaff, not B&B (see Plaintiff’s exhibit 6). During the interactions with the parties, Biggerstaff never made known to Appellant that she was acting as an agent for B&B (See Transcript page 151). In fact, just the

opposite as Biggerstaff admitted in trial that she only has one telephone number that she uses for personal use (See Transcripts page 146-147) and she admits that all the text messages she sent to Appellant at no time did she represent herself as an agent for B&B (See Transcript page 147). There was no notice given to Appellant that Biggerstaff was acting as an agent for B&B and there was no way for Appellant to know that Biggerstaff was acting as an agent at the time of their discussions about the property. The Trial Court clearly erred in this ruling.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, the Appellant respectfully submit that the Trial Court erred in finding that the Respondent was unjustly enriched by the Appellant, and that Cathy Biggerstaff should not be held personally liable.

Wherefore, the Appellant respectfully request that the judgements be reversed.

Respectfully Submitted,

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