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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM ORANGEBURG COUNTY
In the Court of Common Pleas**

The Honorable Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2023-000600

Yonderfield, LLC,..... Respondent

v.

**RI, Inc. And Seating Services, LLC;
Scott Suprina; and John Doe, Shareholders;
Defendants,**

Of whom Scott Suprina is the Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in allowing for an individual defendant, successor in interest to a sold business, to be named and served after the original statute of limitations would have ended?
- II. Did the trial court err in failing to direct a verdict or otherwise grant relief to the Defendant(s) notwithstanding the Jury's verdict in favor of the Plaintiff?
- III. Was it proper for judgment to be entered against an individual Defendant?
- IV. Was evidence about the sale of the individual Defendant's company proper before the jury?

STATEMENT OF THE CASE

This case was filed on March 18, 2018 in the County of Orangeburg. Defendants filed an answer and counterclaim. Plaintiff replied, denying the allegations of the counterclaim.

After the exchange of written discovery and depositions, the case was stricken from the docket by a 40G) consent order and restored months later in July of 2020. Upon restoration of the matter, Plaintiff filed a motion to amend the original complaint to reflect Scott Suprina as Defendant; discovery revealed that Mr. Suprina had liquidated portions of his company and sold the remaining operations following service of this suit. The order allowing for amendment and service was signed by Judge Edgar Dickson in Circuit Court. *TR Order*.

Plaintiffs counsel attempted on several occasions to seek an acceptance of service through Mr. Suprina's counsel, but Mr. Suprina ultimately did not wish for his counsel to accept service, and he was served with the Summons and Amended Complaint at his residence in New York. Judge Markley Dennis denied a motion for Summary Judgment as service was accomplished as outlined in the Circuit Court's previous order. *TR Order Partially Denying Summary Judgement*.

This case was tried in January of 2023, and a verdict was returned in favor of Plaintiff.

FACTS

This case arises from a business transaction and dispute between Yonderfield, LLC (hereinafter "Yonderfield" or "Respondent") and Circuit Court Defendants (including Appellant Scott - collectively referred to hereinafter as Appellant). Yonderfield, was at the time (2017), an active outdoor music venue in Orangeburg County, South Carolina. Defendant RI, Inc. and Seating Solutions was a seating supplier that worked with many types of venues, including those for musical performances. Appellant Scott Suprina was, in 2017, the owner of this seating business.

Respondent was contacted by persons in the music industry who made it aware that Appellant had recently ceased use of numerous seats, bleachers, and similar property from a music festival in

known as "Desert Trip." Respondent understood this surplus seating to be stored in Landrum, South Carolina at Appellant's facilities. Respondent and Appellant began corresponding with Respondent having the understanding that it could rent or purchase the seating from the aforementioned "Desert Trip" festival for its upcoming season of musical shows.

Appellant Scott Suprina and his employees visited the grounds of Yonderfield and spoke with Respondent through its employees and representatives. At this time, Respondent began a process to negotiate the purchase or rental of the seating it needed. Throughout this process, Respondent and Appellant corresponded on numerous occasions in an attempt to negotiate terms for a final sale or rental of seats. At the request of Appellant, Respondent provided a good faith payment, which Respondent paid in anticipation of coming to final terms.

Respondent then learned that the seating originally mentioned from the "Desert Trip" festival was not available or already sold, and Appellant purported to be manufacturing new seats, bleachers, and similar structures for Respondent. Believing that negotiations had broken down based on Appellants representations about costs and terms, Respondent asked for the return of its funds. Appellant denied this request. This action ensued.

At trial, nearly all exhibits were entered with the consent of both parties; this included financial records of the financial interactions between Respondent and Appellant. These records showed that Appellant had spent large sums of the amount paid by Respondent on expenses wholly unrelated to Respondent's and Appellant's business with one another. These expenditures included hotel rooms and travel to Charlotte, North Carolina and Orlando, Florida as well as the purchase of generic supplies for Appellant's business. These financial records also showed that Appellant attempted to back-date labor costs to justify its claims to have properly billed Respondent.

Appellant testified, and Appellant's counsel stipulated, that Appellant had sold and/or liquidated his business after this action was filed and that he profited from that sale.

STANDARD OF REVIEW

In a matter in which a Jury has reached a verdict, the appealing party has a high standard of review when appealing said verdict:

In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002) (citing *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999)). "[T]he trial judge is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). Similarly, on appeal, "[t]he jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Id.* at 320, 585 S.E.2d at 274 (citing *Horry Cnty. v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993)).

Bass v. S.C. Dep't of Soc. Servs., 414 S.C. 558, 780 S.E.2d 252 (S.C. 2015).

Appellant also contends their summary judgment motion was improperly denied. Rule 56 of the South Carolina Rules of Civil Procedure states that the moving party is only entitled to summary judgment if the shows that 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. *Kitchen Planners, LLC v. Friedman*, 28173, Appellate Case 2020-001669 (S.C. Aug 23, 2023). These facts are taken in the light most favorable to the Respondent in this matter.

ARGUMENT

- I. **The Circuit Court did not err in ruling that Appellant Suprina could be added to the original suit and did not err in allowing him to be served with the amended complaint.**

The first issue raised on appeal is whether or not Respondent properly amended its pleadings. Rule 15, SCRCP, provides that amendment of pleadings should typically be freely given should it not prejudice the opposing parties. *Health Promotion Specialists, LLC v. S.C. Bd. Of Dentistry*, 403 S.C. 623, 743 S.E.2d 808 (S.C. 2013). A motion to amend is within the discretion of the trial judge and the opposing party has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

In this matter, Respondent moved before the Circuit Court for an Order permitting the amendment of the pleadings and the service of an amended complaint. Appellant has stated that this amendment is improper and that Respondent's motion should have been denied. It is important to note that, at the time of the original claim, Defendant RI, Inc., operating as Seating Solutions, was a functional company with assets, employees, and customers. It was actively transacting business in South Carolina. However, following the filing of this action and initial discovery, Appellant Suprina sold his company and liquidated or dissolved its assets and operations in the sale. It is undisputed that of the assets of Defendant RI, Inc. were transferred to Appellant at the time that this litigation was pending, potentially creating a new statute of limitations even without a Court Order.

At his deposition, Appellant Suprina, for the first time, stated to Respondent that his company was no longer operational and that there was no tail agreement or ongoing relationship with his previous company and the purchasers. This left Appellant Suprina as the successor in interest to the assets and actions of his previously operational corporations. As noted in the Circuit Court's Order: "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." SCRCP 25(c). See *Bryant v. Waste Management*, 341 S.C. 159 (1979). Appellant Suprina directly benefited from the sale of Defendant RI, Inc.'s operations and assets, and by doing so, intentionally or not, exposed himself to being named personally in this matter. The

Circuit Court's Order also contemplated that Appellant Suprina could be served with the amended complaint.

Appellant Suprina was served at his residence in New York after he informed his counsel in South Carolina that he would not allow him to accept service on his behalf. This led to a motion for summary judgment, which was denied.¹ In both Circuit Court hearings and orders, Respondent raised a theme of unclean hands on behalf of Appellant Scott. Unclean hands and other equitable doctrines are a part of South Carolina's legal system generally. The unclean hands doctrine states that a party seeking to "obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy"); Anenson, *Limiting Legal Remedies: An Analysis of Unclean Hands*, 99 Ky. L.J. 63 (2011). Unclean hands or equitable doctrines like equitable tolling or equitable estoppel apply to Appellant's requested relief.

Appellant Suprina was aware of the legal actions brought against his then-functional and operational business. By selling these assets and liquidating his interests to create corporations that could function as mere legal shields, Appellant Suprina made himself a party to this action and a proper individual participant in this case. Appellant Suprina did not disclose until his deposition that he had dissolved the operations of those corporate entities and at that time, Appellant moved timely to address this change in circumstances.

Furthermore, as discussed in more detail *infra* (Argument Section III), this matter was waived at trial by stipulation.

II. The Trial Court did not err in denying motions for a directed verdict and judgment notwithstanding the verdict.

¹ Though Respondent does not necessarily agree, Appellant has described this as a matter of piercing the corporate veil; if it is, then there is no statute of limitations: "An action to pierce the corporate veil is one in equity," *Dixon v. Dixon*, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005). An action in equity does not have a statute of limitations.

Appellant contends that it should have prevailed at either the directed verdict stage of trial or on post-trial motions. For Appellant to have succeeded at either stage would have been a high burden. As stated above, in ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Sabb*, 350 S.C. 416, 427 (2002). Furthermore, jury verdicts should not be disturbed unless no evidence whatsoever can support such a verdict. *Curcio*, 355 S.C. 316, 320 (2003).

This standard is of paramount importance in this case, as the Jury heard a plethora of evidence, both through live testimony and written documentation, that could and did lead for a verdict for the Plaintiff and also prevented the Circuit Court from granting a directed verdict. The Appellant asks this Court to place itself into the mind of the jury, which is an impossible task. There are numerous potential scenarios by which the Jury could reasonably reach the conclusion that the Appellant converted Respondent's monies, even if they also believed that a contract existed at some point.

For example, the jury reviewed Appellant's financial records (Exhibit 52 at trial), which suggests that Appellant began billing Respondent for labor even prior to Appellant's purported claim of when their contract began (January 17, 2017 - labor date, versus January 24, 2017 - date when Appellant claims a contract existed). From the same records, the jury could infer that Appellant misappropriated the monies by spending it on travel unrelated to this transaction (also reflected in Exhibit 52). *See* Trial Transcript pp. 502-504. The jury could also have believed that Respondent was entitled to a return of its good faith payments after continuing negotiations on terms failed and Appellant had the ability to resell its fungible product - seating. The Respondent could go on, but it is not necessary to consider every possible scenario that the jury may or may not have considered and believed. The overarching position of the Respondent is that this is not a novel question of law requiring the guidance of the Court as Appellant suggests. Rather, there are multiple possible

scenarios under which the jury could have reasonably reached its verdict, and as such, that verdict should not be disturbed.

III. Judgment was properly entered by the Court against the Defendants at the Circuit Court level.

As a preliminary matter, Respondent takes the position that this issue was not preserved for Appellate review. Respondent is not aware at this time of an occasion when the Appellant raised the issue of the individual Appellant's addition to the suit under the theory that he was protected by the single business enterprise theory. Respondent avers that it is not aware of any pretrial motion or other action filed by Appellant to strike him as a Defendant, and at trial the opposite was discussed and stipulated. The following stipulation was entered into evidence:

The parties hereby stipulate while this action was originally filed against RI, Inc., also known as Seating Solutions, and Seating Solutions, LLC, that these businesses have been liquidated. Therefore, Scott Suprina is named personally in this action as the former owner of RI, Inc. or Seating Solutions.

Trial Transcript pg. 224, In. 14-24. This was also discussed on the record outside the presence of the jury. Trial Transcript pp. 162-163.

This stipulation constitutes a waiver by Appellant to raise this issue now on appeal. This use of the word therefore in the stipulation has the meaning of "consequently" or "for that reason". It connotes an acknowledgement by Appellant that the substitution of the party is proper. Appellant was the only person to profit from the sale of Defendant RI, Inc., and accordingly, should not be allowed to use the sale to avoid liability. Appellant made the sale with knowledge that this litigation was pending, and acquiesced by stipulation to the jury that he was the proper party to be named.

IV. Evidence about the sale of Appellant Scott's company was proper before the Jury.

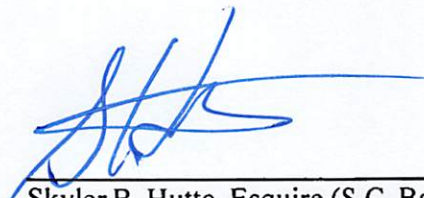
Respondent again notes this matter was not preserved for appeal. As stated by Appellant, there was a generic objection at one point during the cross examination of Appellant Suprina. Trial Transcript pg. 448. However, the Court noted that the objection was premature as no question had yet been asked. *Id.* In. 7-8. Upon the question being asked, there was no objection and no motion to strike. The objection that followed was later was an "asked and answered" objection which was overruled as the question was a new one for this witness.

The question that elicited an objection was "What price did you sell your company for?" *Id.* Appellant Suprina responded "28.5 million dollars." *Id.* This evidence is relevant on a number of grounds. Two central points of relevancy are: one, that Appellant Suprina was certainly able to mitigate damages that he claimed in his counterclaims, and two, that Respondent had claimed punitive damages. A portion of the Court's charge to the jury was on punitive damages. Trial Transcript pg. 538. A defendant's ability to pay is generally a consideration in punitive damages, and as such, the profit Appellant Suprina gained was relevant. This is not an exhaustive list of relevancy for the question posed to the witness.

CONCLUSION

For the reasons set forth herein, Respondent believes that the Circuit Court's Orders as well as the jury's verdict should not be disturbed and that those rulings and findings should be affirmed.

March 13, 2024



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