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May 30 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable J. Derham Cole

Christian Wienands, Charlotte Muxlow, and Gregory MuxlowAppellants,

v.

South Wind Ranch, Ronald Hakala, and Ashley BlackRespondent.

Appellate Case No. 2023-000081

**PETITIONER’S REPLY TO THE RESPONSE TO
THE PETITION FOR REHEARING**

In their Response, the Respondents claim that the Petition for Rehearing “contains only bare, general, and unsupported allegations,” which is simply not true. The Petitioners have supported their claims with voluminous evidence, much of which was sworn testimony, and all that evidence was made part of the Record on Appeal. The Respondents also claim that the Petitioners “cite only to their own pleadings,” which is also not true. Rather, the Petitioners have cited to a significant and substantial amount of documentary and sworn testimonial evidence that was submitted to and disregarded by the trial court in violation of *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023), the plain language of SCRCP 56, and many other cases addressing inappropriateness of summary judgment where genuine issues of material fact exists.

The Petitioners have alleged and supported with evidence – including the evidence submitted in response to the summary judgment motion and included in the Record on Appeal – that the Respondents were first to breach the contract at issue and that the Respondents engaged in unfair business practices by unilaterally increasing the price of a wedding made impossible by the Covid-19 pandemic. The Petitioners have repeatedly cited to and referenced evidence in the Record on Appeal, including screenshots showing Respondent’s breach, sworn testimony on business practices, unilateral price increase, and the impossibility of the wedding, a verified complaint, which stands as a sworn affidavit to the facts alleged in the complaint, and other evidence.

The voluminous evidence adduced and submitted by the Petitioners was disregarded, and the allegations that evidence supported was not taken as true, as required by law. As a result, the Petitioners were robbed of their Due Process rights and robbed of their right to a jury trial guaranteed by S.C. Const. art. 1, §14 and U.S. Const. amend. VII.¹

To the extent the Respondents suggest that a verified complaint is not evidence in their Response, that is incorrect. Not only should the allegations in the complaint have been taken as true, the allegations were verified, standing as sworn testimony contradicting the Respondents’ summary judgment motion, and creating fact questions for a jury on the issues of who actually breached the contract, whether the Respondents’ unilateral price increase was contemplated by the contract, whether the contract should be construed against the Respondents who drafted the contract, whether the Respondents engaged in unfair business practices, and whether the contract

¹ Although the Seventh Amendment has not been fully incorporated against the States, it is clear that the Seventh Amendment creates the right to a jury trial for any controversy exceeding twenty dollars, without limitation based on the Court in which suit is filed. It should be noted that at the time the Seventh Amendment was drafted, most controversies likely were not and could not be brought in federal court. The Petitioners preserve this issue for appellate review.

was rendered impossible by the Covid-19 pandemic. *Dawkins v. Fields*, 580 S.E.2d 433 (2003) (“...a verified pleading may substitute for an affidavit at the summary judgment phase...”)²

Conclusion

For the foregoing reasons, the Petitioners respectfully requests that the Court of Appeals alter its ruling and reverse the Trial Court’s decision, have an oral argument, or hear the case *en banc*. In the alternative, the Petitioners requests that the Court of Appeals’ ruling clarify its ruling to address the reasons summary judgment was appropriate in the presence of many disputed facts and where the Petitioners’ allegations were supported by many forms of evidence, both in the trial court and included in the Record on Appeal.

Respectfully submitted,

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² In *Dawkins*, our Supreme Court noted that allegations made upon information and belief do not meet the knowledge requirements of SCRCP 56. In the Petitioner’s complaint, however, there is a long factual background section describing specific allegations about the Petitioners’ business practices, their initial breach, and a plethora of other facts, all of which stands as sworn testimony, and must be taken as true.

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The Honorable J. Derham Cole, Circuit Court Judge

Christian Wienands, Charlotte Muxlow, and Gregory

Muxlow,.....Appellants,

v.

South Wind Ranch, Ronald Hakala, and Ashley Black,Respondents.

Appellate Case No. 2023-000081

PROOF OF SERVICE

I certify that on this date, May 8, 2024, I filed the foregoing **Petitioner’s Reply to The Response to the Petition for Rehearing** with the South Carolina Court of Appeals via electronic filing, to ctappfilings@sccourts.org. A copy was also served on Respondents via electronic service, addressed to the attorney of record below by the CM/ECF system:

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