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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LANCASTER
2023-CP-29-00493

Roberta Moore

Vs.

Rebecca Giesler

Lancaster, South Carolina

July 24, 2023

Before the Honorable Brian Gibbons

APPEARANCES

For the Plaintiff: Pro Se

For the Defendant: Jennifer Cloud

Reported by: Michael C. Watkins

Certified Court Reporter

1 THE COURT: All right. The last matter before the
2 Court -- and, again, thank everybody for their patience --
3 is Roberta Moore versus Rebecca Giesler, or Giesler. All
4 right.

5 (Break in proceedings.)

6 THE COURT: This is a motion to dismiss on docket
7 23-CP-29-493. And, again, as far as paperwork and arguments
8 are concerned, y'all tailor them accordingly. I can read
9 and everything that has been filed. I have seen the file in
10 preparation, and I'm going to take the matter under
11 advisement much like I have on pretty much everything I have
12 this morning and further deliberate on whatever happens, but
13 if y'all could hit the high points in your arguments I would
14 appreciate it. And are you Ms. Cloud?

15 MS. CLOUD: I am, Your Honor.

16 THE COURT: All right. Ms. Cloud, it's your motion.
17 You represent Miss -- is it Giesler or Giesler?

18 MS. CLOUD: Giesler.

19 THE COURT: You represent Ms. Giesler? All right. Let
20 me hear from you then on your motion to dismiss, and then
21 where is Ms. Moore?

22 MS. MOORE: That's me.

23 THE COURT: Hey, Ms. Moore, how are you? I'll hear
24 from you then in your response, and in your response you can
25 just sit right where you are and just speak into the

1 microphone. Okay?

2 MS. MOORE: Can I say one thing?

3 THE COURT: Yes, ma'am.

4 MS. MOORE: She did not serve me properly.

5 THE COURT: Okay. Ms. Cloud, do you disagree with
6 that?

7 MS. CLOUD: I do.

8 THE COURT: All right. Let me see. The motion to --
9 how did she not serve you properly with the motion to
10 dismiss?

11 MS. MOORE: She didn't send anything -- well, she sent
12 the notice of hearing by certified mail, but none of the
13 other stuff, maybe one other thing by certified mail. But I
14 don't see no affidavits or anything. She -- what she did
15 was file electronically, and she put on the electronic thing
16 putting in the mail, but --

17 THE COURT: Okay. All right. Well, I'll look at that
18 when I review everything --

19 MS. MOORE: Okay.

20 THE COURT: -- and your position is contained in the
21 record of the case, and I'll deal with it as we can go.
22 Okay?

23 MS. CLOUD: Yes, Your Honor. And I --

24 THE COURT: All right. I'll hear from you then, Ms.
25 Cloud.

1 MS. CLOUD: And then just on that, I have return
2 receipts and the certified, so -- but --

3 THE COURT: All right. I'll look at it.

4 MS. CLOUD: Yes, Your Honor.

5 THE COURT: Yes, ma'am?

6 MS. CLOUD: All right. So Jennifer Cloud for the
7 defendant. If it may please the Court?

8 THE COURT: Yes, ma'am.

9 MS. CLOUD: So this is the defendant's motion to
10 dismiss. And so just very briefly, the facts of this case
11 all hinge around breach of contract. So there have been two
12 real estate contracts entered into, one promissory note, and
13 there is a disputed addendum, which we won't bring up in
14 this hearing. It's a seller financing transaction, and so
15 the promissory note was seller financing, and so we are
16 bringing a 12B6, and a 12B7 action. As you said, I will
17 just kind of hit each action in our argument very briefly,
18 and if you would like a little bit more explanation on any
19 argument please just let me know.

20 THE COURT: Sure.

21 MS. CLOUD: So the first cause of action is under --
22 they're alleging a violation of South Carolina Unfair Trade
23 Practices Act. Case law has well settled that a breach of
24 contract will not fall under this cause of action. Also,
25 you must establish that there was an adverse impact on the

1 public interest. That is not here, it's a breach of
2 contract claim in its heart, the -- of that cause of action,
3 it's not here. There's no facts remotely to allege that.
4 The next is a breach of contract in the amended complaint by
5 the defendant (sic.) She states that the defendant breached
6 the contract by failing to get bond for title. The
7 plaintiff fails to identify what the contract is. She has
8 it capitalized but it's not defined in any of her pleadings,
9 so I'm -- we're not sure what contract she's saying is
10 breached. There also is no supporting exhibits to show that
11 anywhere says that she must get a bond for title, that the
12 defendant must get a bond for title. And so, one, she has
13 not alleged for facts for the existence of a contract, and
14 so without that you can't really show a breach. She also
15 has shown no damages, so there's no fact relating to any
16 damages. For the third cause of action, which is breach of
17 contract accompanied by a fraudulent act, again, we would
18 state that she has not shown the existence of a contract,
19 and/or she has not stated which contract she believed is
20 breached. But as for this one under Rule 9B for anything
21 with fraud you must plead it with particularity. The only
22 alleged fact for particularity under this is in the amended
23 complaint she states defendant breached the contract by
24 failing and/or refusing to perform contractual duties.
25 There is nothing at all alleging a fraud -- yeah, a

1 fraudulent act or anything of that nature. So we --

2 THE COURT: Well, let me ask you this, I don't want to
3 steal the thunder from her argument, but I'm sure her
4 argument is going to be something similar to this, I mean, a
5 motion to dismiss, I simply look at the four corners of the
6 paper. Isn't the four corners of the paper her pleadings,
7 her amended pleadings, sufficient enough to get her past a
8 hurdle of a motion to dismiss? Doesn't she have a --
9 assuming her claims are true, which on a motion to dismiss I
10 give her the benefit of the doubt, assuming that is true, is
11 there a justiciable controversy that the plaintiff may be
12 entitled to if she's allowed to pursue her case?
13 Understanding you have -- you and your client have the right
14 to ultimately seek summary judgment, or get dismissal at a
15 later time, but is there enough in her complaint that would
16 survive a motion to dismiss?

17 MS. CLOUD: And, Your Honor, I don't believe so, not
18 for some of these --

19 THE COURT: All right. Tell me why.

20 MS. CLOUD: Not for some of these cause of actions.
21 The unfair trade practices, she alleges zero facts for that.
22 She -- there is zero facts for negligent and emotional
23 distress. There are zero facts for invasion of privacy.
24 She doesn't even -- she says invasion of privacy is one big
25 act, she doesn't --

1 THE COURT: So SCUTPA, emotional distress, invasion of
2 privacy. What else?

3 MS. CLOUD: Negligence.

4 THE COURT: And this is a breach of contract action,
5 not a negligence action.

6 MS. CLOUD: Yes, Your Honor.

7 THE COURT: Okay. What does she allege was -- I'm
8 just -- I'm going to read everything, but what do you
9 believe she fails to allege which would sustain her
10 negligence action?

11 MS. CLOUD: A fiduciary duty to start, and then the
12 breach of that duty.

13 THE COURT: Okay.

14 MS. CLOUD: South Carolina has stated that there is not
15 a duty between a creditor or debtor, mortgage servicing
16 debtor, or between third parties who relationships arise
17 through a lender or debtor, so there's no fiduciary duty
18 there even if there was no breach. And she's also done
19 gross negligence, so, of course, we would have the same
20 exact argument. And then intentional infliction of
21 emotional distress, the no reasonable man standard to endure
22 it. No facts whatsoever that there's any type of damages
23 like that. So -- and then let's see, the last infliction of
24 emotional distress. So, Your Honor, we would --

25 THE COURT: All right. How many causes of action are

1 there?

2 MS. CLOUD: Eight.

3 THE COURT: All right. So negligent infliction of
4 emotional distress. You believe that if this case proceeds
5 it should only be on a breach of contract action.

6 MS. CLOUD: Yes, Your Honor.

7 THE COURT: And so you've alleged, one, two, three --
8 SCUTPA, emotional distress, invasion of privacy, negligence,
9 gross negligence, intentional infliction of emotional
10 distress, and negligent infliction of emotional distress,
11 that's a part of negligence, those seven should be
12 dismissed, and this case should just focus on the alleged
13 breach of contract.

14 MS. CLOUD: Yes, Your Honor.

15 THE COURT: Okay. And did she sue for breach of
16 contract accompanied by a fraudulent act?

17 MS. CLOUD: I'm sorry?

18 THE COURT: Did she sue for breach of contract
19 accompanied by a fraudulent act --

20 MS. CLOUD: She has, yes.

21 THE COURT: -- as well? All right. So that -- okay.

22 MS. CLOUD: And we're arguing that there is -- she did
23 not plead with particularity.

24 THE COURT: Sure. So breach of K, and breach of K -- K
25 is the initials you learned for contract, that's all that

1 means. Breach of K, and breach of K with fraudulent intent.
2 Anything else?

3 MS. CLOUD: Well then, Your Honor, we do have a 12B7
4 motion on all of the contracts and the promissory note.
5 There is an Alexis Moore, and the plaintiff has failed to
6 join her in any in the action, and she refuses to join her.

7 THE COURT: Okay. Thank you, ma'am.

8 MS. CLOUD: Thank you, Your Honor.

9 THE COURT: All right. Thank you, Ms. Cloud. All
10 right. Let me hear from you then, Ms. Moore. And, again,
11 you can just stay right where you are.

12 MS. MOORE: Thank you, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. MOORE: This is Alexis Moore just so you know, this
15 is my daughter.

16 THE COURT: Okay. All right.

17 MS. MOORE: She is a cosigner to the contract, not a
18 co-borrower.

19 THE COURT: Okay.

20 MS. MOORE: So with that being said, they were saying
21 she really did not have to be joined to the contract being a
22 cosigner. And on top of that, no communication from the
23 conception, the eight years of this contract, has ever been
24 sent to her other than the letter that Jennifer Cloud sent
25 trying to extort --

1 MS. CLOUD: Objection. I'm not extorting anybody --

2 MS. MOORE: Trying to get me to pay. Okay.

3 THE COURT: That's a better way of describing it. Go
4 ahead.

5 MS. MOORE: Get me to pay \$90,000 more for my house or
6 put me out.

7 THE COURT: So this is an owner financed house, is that
8 what it is?

9 MS. MOORE: It's an owner financed house. But in my
10 research I now understand why they were trying to say that
11 she wasn't a mortgage lender because of the Dodd-Frank Act,
12 because that house actually still had a mortgage on it and
13 she should not have financed it that way.

14 THE COURT: Okay.

15 MS. MOORE: And they're trying to put on the
16 paperwork -- I want to submit this to you -- they're trying
17 to put on the paperwork that the house is valued at
18 \$290,000. This will show you that this house is valued at
19 almost \$500,000.

20 THE COURT: Okay. Mr. Deputy, hand that to Ms. Cloud
21 just for the purpose of this hearing. Any objection to me
22 looking at that, Ms. Cloud?

23 MS. CLOUD: No objection.

24 THE COURT: Hang on one moment. Okay. Hand that up to
25 me. Yes, ma'am?

1 MS. MOORE: But I also had it -- did a market analysis
2 on it as well. So in her motion to dismiss I notice she
3 didn't put a lot of it in the memorandum of law, which I
4 didn't get a chance to respond to because it came late and I
5 didn't have the time to respond before coming here.

6 THE COURT: Yes, ma'am.

7 MS. MOORE: But she had put on there the court is the
8 wrong jurisdiction, but it is the right jurisdiction. And
9 based on further research it's now understandable that the
10 defendant should have been -- should not have entered into
11 the bank, which I just told you about, nevermind that. What
12 she omitted in the memorandum of law was where she had said
13 in her pleading -- in her argument that there was no
14 contract -- well, that she alleged that I committed fraud by
15 signing the defendant's name to this addendum that they're
16 trying not to acknowledge, she included all of the contracts
17 but not the addendum in her paperwork, and there was a
18 verbiage in there that sounded like they were trying to
19 accuse me of fraudulently signing this document. So this is
20 another thing -- I'll give you all of these things --

21 THE COURT: Okay.

22 MS. MOORE: -- that I want to submit. But this is the
23 paperwork. Her husband is deceased now and that's who we
24 did all of the paperwork through. But this is the paperwork
25 inclusive --

1 THE COURT: Whose husband is deceased?

2 MS. MOORE: The -- Ms. Giesler's husband is deceased.

3 THE COURT: Okay. Got it. Okay.

4 MS. MOORE: And everything initially went through him,
5 all contracts. We were trying to get a bond for title but
6 the county said that we couldn't do it unless -- well, it's
7 all in here.

8 THE COURT: I'll look at all of that stuff.

9 MS. MOORE: Okay. As well as there was a portion in
10 there that was talking about where she had given out my
11 personal information, and then they came back and said that
12 I was aware of who Mike Furlick (phonetically) was. But in
13 the communications that I initially got from her --

14 THE COURT: Thank you, ma'am.

15 MS. MOORE: -- in the communications that I initially
16 got from her she said that she had talked with her real
17 estate attorney, and it was my assumption when I responded
18 that I was responding to her attorney, not to just some
19 strange person that she had given -- or now I know it's her
20 dad, that she had given all of my personal information about
21 the contract to. So I don't want to waste your time,
22 because I know this has been --

23 THE COURT: You're not wasting my time, ma'am. This
24 case is important to you, and I take everything I do very
25 seriously, and I'm going to read -- I saw -- you sent in a

1 response at the end of June, I'm going to read through all
2 of that. I'm going to read through everything.

3 MS. MOORE: Thank you. Now, she was saying that she
4 had no obligation to send me any kind of statements. I was
5 trying to get the loan transferred to my -- get it
6 refinanced, and she refused to give me the documentation
7 that I needed in order to get the loan refinanced. I asked
8 her -- I'm not going to give you this, but she said that she
9 was constantly communicating with me. This is how much I
10 emailed her daily, two, three, four times a day trying to
11 get the documentation, because you cannot get a mortgage
12 loan without the documentation over the last eight years
13 that I've been paying her, but she did not give me that.
14 But I do have the documentation. I'm up 2:00, 3:00 in the
15 morning because I'm so stressed out about what she's trying
16 to do. So looking at the Consumer Financial Protection
17 Bureau, 1026541, it says that she is supposed to give me
18 periodic statements of my mortgage, you know, and things
19 like that, but she never did that even after requested. And
20 I told you about her posting the threat, you know, sending
21 me the mail and email, and having her attorney follow
22 through with the threat of -- well, with the what -- however
23 you want to word it, paying her \$89,000 over the agreed upon
24 contract.

25 THE COURT: How much do you think is left owed under

1 the contract?

2 MS. MOORE: I think it's around 240 that's owed on the
3 contract. So -- and I sent her an email, and I'm like: Why
4 would I pay you \$100,000 pretty much over --

5 THE COURT: How much do you believe you've paid?

6 MS. MOORE: That is part of -- in the paperwork that I
7 sent.

8 THE COURT: I know it is, I'm just -- I'm asking
9 just --

10 MS. MOORE: I want to say that I have paid like
11 170,000.

12 THE COURT: All right. So the contract -- the contract
13 sales price was 240?

14 MS. MOORE: The contract sales price was 260.

15 THE COURT: 250.

16 MS. MOORE: 260.

17 THE COURT: 260. You've paid 140 approximately.

18 MS. MOORE: Well, that was me calculating everything
19 that I've paid over --

20 THE COURT: Again, I'm not holding you to these
21 numbers. These are all things -- this lawsuit just started
22 so I'm just trying to get an approximation in my head of,
23 you know, what we're taking about here.

24 MS. MOORE: Yeah. I want to say when I calculated what
25 I put into it, I want to say it all came up with -- maybe

1 it's 100 and something. I'm sorry, my mind is just going --

2 THE COURT: I know. I'm not holding you to anything.

3 MS. MOORE: Okay. But I guess at this point -- and
4 she's saying that I need to, like I said, pay more money or
5 she was going to put me out of the house without the proper
6 procedure.

7 THE COURT: Has she filed a foreclosure action?

8 MS. MOORE: Nuh-uh, she hasn't filed any foreclosure
9 actions. Because the payment -- what's in question right
10 now is the taxes --

11 THE COURT: Sure.

12 MS. MOORE: -- on the house.

13 THE COURT: Who has always paid the taxes on the house?

14 MS. MOORE: Well, this is -- when we signed the
15 agreement I was supposed to pay the taxes. This is where
16 that bond for title came in --

17 THE COURT: Right.

18 MS. MOORE: -- and the communications with Matt.
19 Because the agreement was that the taxes would be paid in my
20 name so that I would not be paying renter's taxes, I would
21 be paying owner occupied.

22 THE COURT: So who owns the deed to the house? Who
23 owns the deed to the --

24 MS. MOORE: She does. She still has the deed.

25 THE COURT: This sounds to me like a rent to own type

1 situation.

2 MS. MOORE: Right. But she didn't do it as a rent to
3 own.

4 THE COURT: Okay.

5 MS. MOORE: She did it --

6 MS. CLOUD: Your Honor --

7 THE COURT: Hang on. I'm just -- again, I'm not
8 holding y'all to either thing, I'm just -- I want to make
9 sure I understand the general idea before I start reading
10 through all of this stuff.

11 MS. MOORE: Okay. Yeah --

12 THE COURT: I'm going to come back to you, Ms. Cloud.

13 MS. MOORE: Okay. So it wasn't done as a rent to own,
14 it was done as a mortgage with a -- the interest rate went
15 up after five years.

16 THE COURT: Sure.

17 MS. MOORE: Okay. So it started off as -- she did it
18 like a -- they did it, Matt and her, did it like a 40 year
19 mortgage. Okay. And then after five years the interest
20 rate went up, so I am paying the higher interest rate. So
21 the question about the taxes, Matt had made an agreement
22 with me, and that's where I need to know if that email
23 validates the agreement that he made with me because of the
24 context of the email. Because he said that I would only
25 have to pay half of the taxes since he couldn't do the bond

1 for type --

2 THE COURT: Got you.

3 MS. MOORE: Okay. So he made an agreement, she refuses
4 to honor that agreement and she's saying because it's not a
5 part of the signed contract.

6 THE COURT: How long ago did Mr. Giesler become
7 deceased?

8 MS. CLOUD: 2017/2018.

9 THE COURT: 2017 -- so she inherited the property as
10 his surviving spouse, and that's who y'all have been dealing
11 with now since the past six years.

12 MS. MOORE: And when we say dealing with, she has never
13 talked to me on the phone.

14 THE COURT: All right. Well, let me kind of cut to the
15 chase here for the purpose of this hearing, and I don't want
16 to -- you know, again, I'm going to read through everything.

17 MS. MOORE: Okay.

18 THE COURT: This lawsuit has just started, it's a
19 motion to dismiss. First of all, anything in response to
20 what she's told me in support of your motion to dismiss
21 briefly?

22 MS. CLOUD: Well, Your Honor, there is no mortgage.

23 THE COURT: I'm sorry.

24 MS. CLOUD: There is no mortgage, so --

25 THE COURT: Okay. That's your position in the

1 paperwork, and I'm going to read through all of this. All
2 right. Let me just say this, and I'm sure you've probably
3 gone down this route -- hang on a second.

4 MS. CLOUD: Okay.

5 THE COURT: Let me say it and I'm sure you're probably
6 going to go down this route. Y'all are at -- I'm not saying
7 you won't be ultimately successful, I don't know what I'm
8 going to do because I've got to read through everything, but
9 y'all are at a distinct disadvantage when you're not a
10 lawyer. Okay? I 100 percent recommend you hire an attorney
11 to represent y'all's interest in this case. Okay?

12 MS. MOORE: Okay.

13 THE COURT: Your lawsuit, without ruling on whether
14 it's going to keep going forward or not, or whether -- I
15 mean, certainly your paperwork -- did you find that stuff on
16 line, or did you --

17 MS. MOORE: I got it all.

18 THE COURT: What I'm getting at is --

19 MS. MOORE: And I have the law cited, too.

20 THE COURT: Sure. And there's a lot of allegations
21 made, there's a lot of -- there's a lot of causes of action
22 made. Okay? But, of course, this is a court of law first
23 and foremost, but it's also a court that has to protect
24 people's rights. Okay? And so obviously that's why we have
25 court because there's a lot of he said/she said going back

1 and forth, and y'all get all of that. Okay? But I'm going
2 to decipher through all of this, go through everything and
3 figure out what if any of your causes of action should
4 remain as a matter of law based upon the arguments
5 presented. Okay? I don't know what I'm going to do yet.
6 In the meantime I urge you, and I'm sure Ms. Cloud here
7 would agree, not saying you're not easy to deal with, but
8 it's a lot easier to deal with a lawyer on the other side,
9 because that lawyer is not personally invested in it,
10 doesn't have the emotions attached to it like you I do.
11 This is your home, I get it, I understand. Okay? That's
12 why you need to have a lawyer to kind of put that to the
13 side and let's get down to the business and the heart of the
14 matter really. Okay? So I'm not saying you're claim is
15 defeated at this point in time because I don't know, I
16 haven't made any decision yet, I just -- moving forward from
17 today I urge you to consider getting an attorney. There's
18 plenty of good attorneys in this area. If you don't want to
19 be in Lancaster County because, you know, you don't want to
20 be in Lancaster, there's plenty of good lawyers in Chester,
21 plenty of good lawyers over in York. In fact, there's three
22 of them right behind you right there. Okay? And so I would
23 urge you to consider doing that. Okay? I'm not making you
24 do that, I just think you should do that. Okay? Anything
25 else for the purpose of this hearing?

1 MS. CLOUD: No, Your Honor.

2 THE COURT: All right. Anything else for the purpose
3 of this hearing?

4 MS. MOORE: Yes. She said I don't have a mortgage, but
5 they provide me with a 1098 every year showing me the
6 mortgage payment and interest.

7 THE COURT: Right. See, you know, that may be an issue
8 of fact, I don't know. And you know what I mean when I say
9 that, I don't know. But let's see where this thing goes.
10 Okay? I'm just trying to move the case forward. But I'm
11 going to look through all of these legal issues, make a
12 decision as to the legal issues, but I want you to get a
13 lawyer. Okay?

14 MS. MOORE: That sounds good.

15 THE COURT: All right, thank you. Everything else
16 good? All right. Y'all have a great day. We are -- I'm
17 taking this matter under advisement and I'll issue a
18 decision forthwith.

19 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,
2 Certified Court Reporter, do hereby certify that the
3 foregoing is a transcript of the hearing in
4 Lancaster County on July 24, 2023.

5 I further certify that I am not of counsel, nor
6 interest to any party hereto.

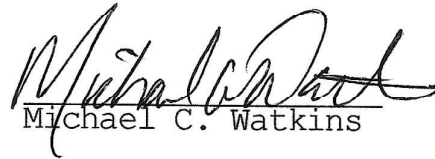
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May 24, 2024

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Michael C. Watkins

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Court Reporter

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