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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2024-000071

RONALD SOLES,Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC,Defendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is theAppellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL:

- (I.) That the Court erred in not allowing the Appellant to appear and present any evidence at the hearing.
- (II.) That the Court erred in not allowing the Appellant to present any legal argument at the hearing.
- (III.) That the Court erred in not making specific findings of facts, as well as conclusions of law.
- (IV.) That the Court erred in not granting the Motion To Stay.
- (V.) That the Court erred in awarding an excessive amount of damages to the Respondent.

STATEMENT OF THE CASE:

This action was commenced by the filing of the Respondent's Complaint dated September 30, 2022, and served upon the Appellant. The Complaint alleges ten, (10), causes of action. The Appellant duly filed and served his Answer And Counterclaim, and the Respondent filed and served a Reply. Various Motions were filed and served by both Parties to this action resulting in an Order entitled "Proposed Order for Plaintiff's Motion For Summary Judgment" dated March 1, 2023, an Order entitled "Order Denying Defendant's Motion For Reconsideration dated February 28, 2023, an Order entitled "Motion To Enforce Court Order from March 23, 2023, dated April 4, 2023, and an Order entitled "Defendant in Contempt Of Court" dated April 20, 2023. These Orders are presently under appeal. Another Motion hearing was held to enforce Judgment and Attorney's fees were held on October 19th, 2023. This resulted in an outrageous Order dated November 17th, 2023, and the Order Denying The Defendants' Motion For Reconsideration dated December 6th, 2023. These are the two Orders under appeal in this case.

STANDARD OF REVIEW:

Errors of law and abuse of discretion.

ARGUMENT:

- (I.) That the Court erred in not allowing the Appellant to appear and present any evidence at the hearing.
- (II.) That the Court erred in not allowing the Appellant to present any legal argument at the hearing.

It is rudimentary that both the U.S. and State Constitutions require notice and an opportunity to be heard Carroll vs. President and Commissioners of Princess Anne, 393 U.S. 175, 89 S.Ct. 347, 21 L.Ed.2d 325 (1968).

In the present case, it is clear that the failure to give notice, formal or informal, and to provide an opportunity for an adversary proceeding before the holding of the rally was restrained, is incompatible with the First Amendment. Because we reverse the judgment below on this basis, we need not and do not decide whether the facts in this case provided a constitutionally permissible basis for temporarily enjoining the holding of the August 7 rally Id.

In spite of notice given to the lower Court that the undersigned was the appellate counsel only for the Appellant, and the Court was given written notice that this is the case, the lower Court refused to let the Appellant speak at the hearing, Transcript page 4 lines 9 – 20, page 17 line 16 through page 18 line 1, page 21 lines 2 – 14. Regardless of whether the Appellant’s trial lawyer, Brian Smith, or his appellate counsel were present, the Appellant had the right to speak at the hearing. To deny him this is a denial of a fundamental constitutional right.

- (III.) That the Court erred in not making specific findings of fact, as well as conclusions of law.

Neither Order from which this appeal is taken make findings of fact. S.C.R.C.P. Rule 52 (Transcript pages – the Order of the Honorable Bentley Price dated November 15th, 2023, filed for record November 17th, 2023, and the Order Denying Defendants’ Motion For Reconsideration of Bentley Price dated December 6th, 2023, filed for record December 6th, 2023.) Clearly, these Orders do not comply with S.C.R.C.P. Rules 41 and 52.

(IV.) That the Court erred in not granting the Motion To Stay.

This matter is on appeal, and, therefore, jurisdiction has been lifted to the South Carolina Court Of Appeals, and although a part of the judgment concerns money damages, the lower Court action and all further proceedings in the lower Court are stayed for lack of subject matter and personal jurisdiction. South Carolina Code § 18-9-130(B)(1), In the Estate of Connor, Opinion No. 2009-UP-502 (S.C. App. 10/29/2009), Opinion No. 2009-UP-502. (S.C. App. Oct 29, 2009), Rule 241 of the South Carolina Rules Of Appellate Procedure.

Since the Respondent is not the titled owner of the automobile, which is the subject matter of this action, there is no jurisdiction in this Honorable Court. The Respondent lacks standing to bring this action. The true titled owner of this automobile is a necessary and indispensable Party, who is not a named Party in this action. S.C.R.C.P. Rule 19. This last Motion hearing was not held in the Thirteenth Judicial Circuit. S.C.R.C.P. Rule 52(c). The lower Court lacks both personal and subject matter jurisdiction.

Despite the lower Court’s holding, the Appellant’s Motion To Stay The Proceedings was not and is not moot. The controversy at issue has not been resolved.

(V.) That the Court erred in awarding an excessive amount of damages to the Respondent.

Clearly, as a matter of common sense, by itself, the 1969 Chevrolet Camero in this case is not worth Seven Thousand Two Hundred and Fifty dollars, (\$7,250.00). In addition, the Respondent should not have been granted any attorney's fees from the Appellant. There is no legitimate reason for these to be awarded to the Respondent.

CONCLUSION:

In conclusion, as set forth in the Appellant's brief and reply brief, in reference to the appeal in Appellate Case No. 2023-000294, the Respondent was not the titled owner of the automobile, when this litigation was commenced. Jason Brockman is not a proper Defendant in this case. S.C. Code § 33-44-303 (1976), as amended. Since the lower Court lacks jurisdiction to issue any rulings, whimsical decisions are beyond errors of law. They constitute an abuse of discretion as in this case. For the reasons stated hereinabove, the lower Court's Orders should be vacated and reversed.

Respectfully submitted,

Dated: June 27th, 2024
Greenville, South Carolina

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