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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Lexington County

Court of Common Pleas

The Honorable Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2024-001308

Dennis Gallipeau,

Appellant,

v.

DP Marine,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial courts correctly hold that Respondent had a valid cause of action?
2. Did Respondent sit on its rights allowing the statute of limitations on whatever claim it may have had to expire?

STATEMENT OF THE CASE

Seventeen years ago, October 2, 2007, Appellant brought his boat to Respondent's place of business, DP Marine, a marine repair and storage facility, to have his boat winterized and placed in short term storage. The oral storage contract was for \$40 per month, rent due on the first of each month. Appellant paid the work order for winterizing the boat and paid one or two monthly storage fees and a friend paid an additional two months storage fee. For more than sixteen years the boat sat at DP Marine, with no storage fees paid. Sometime in 2008, DP Marine raised the monthly storage fee to \$50 per month and the rent, and late fees, continued to accrue. DP Marine took no action to perfect or enforce any lien it could have placed on the boat. Instead of asserting its rights, and for what Appellant alleges to be a deeply personal, albeit incorrect motive, David Pou, the owner of DP Marine, decided to intentionally cause as much damage to the boat as he could think of. The first action DP Marine took was to remove the boat's cockpit cover. The cockpit cover covers and protects the entire interior section of the boat, including the engine, engine compartment, interior, seats, and the cuddy cabin, sometimes called a 'v-birth' from the elements. Next, Respondent raised the rear hatch to expose the engine compartment to the elements. David Pou also removed the engine protective enclosure box (consisting of three sections) which is insulated on the interior side of the engine compartment in the event of a fire and it also muffles the sound of the engine while the boat is being operated. The top of the rear hatch is padded and used as a comfortable place to lounge and enjoy the sunshine. By taking these actions, Respondent fully exposed the engine and engine compartment to the elements. But still, David Pou was not done. He then used Appellant's keys to unlock the smoked plexiglass

sliding door leading into the cuddy cabin area (used for sleeping, eating and relaxing out of the sun) to ensure that the cabin area would also be exposed to the elements. At trial in Magistrate Court, when asked what happened to the cockpit cover, David Pou answered, “Maybe it disintegrated.” The cockpit cover was made of thick canvas and attached to the boat with metal snaps, beginning at the front base of the windshield and extending all the way back to the transom, it covered the entire interior of the boat, a boat with an agreed value of \$55,000.

Appellant was surprised to learn that DP still had his boat. He arranged to go to DP Marine to inspect the boat. When Appellant saw the condition of his boat, and the seemingly delight Appellant believes he saw in David Pou’s eyes while inspecting his boat, and after asking ‘what happened to the cockpit cover’ and David replied, “The boat never had one,” instead of discussing the storage fee, Appellant filed a Summons and Complaint action in the Magistrate Court, on October 17, 2023, asserting a claim for the damage to the boat while in Respondent’s custody and care. DP Marine counterclaimed for “storage fees.” The case was tried on December 11, 2023, before the Honorable Rebecca L. Adams, Magistrate, Lexington County. The Magistrate’s Return to Appeal states:

The Plaintiff proceeded to present his evidence and testimony and referred to more significant damages he planned to claim later, the Defense objected stating that if the Plaintiff planned on filing another complaint against the Defendant for the same incident, it should be handled at one time.

At the Magistrate’s recommendation, Appellant withdrew his claim and trial proceeded on Respondent’s counterclaim for storage fees. The Magistrate found, and the Circuit Court, the Honorable Walton J. McCloud agreed when affirming the Magistrate Court judgment, “The

record shows the Defense presented credible evidence and testimony as to the Plaintiff's failure to pay the storage fees." DP Marine's counterclaim did not allege, and neither the Magistrate nor the Circuit Court identified, any lien or cause of action other than "storage fees."

STANDARD OF REVIEW

In reviewing the judgment rendered in Magistrate Court, and affirmed in Circuit Court, the appellate court applies the same standard of review as the trial court. Doe v. Martin, 373 S.C. 390, 645 S.E.2d 245 (2007). Accordingly, the appellate court considers whether the Respondent set forth a valid claim for relief. Sloan Constr. Co. v. Southco Grassing, Inc., 377 S.C. 107, 659 S.E.2d 158 (2008)

The power to set aside a judgment lies solely within the discretions of the sound discretion of the trial court and will not be disturbed on appeal absent a clear showing of an abuse of discretion. Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E. 2d 263 (2009). An abuse of discretion occurs when the judge issuing the judgment was controlled by some error of law. Hill v. Dotts, 345 S.C. 304, 547 S.E. 2d 894 (Ct.App. 2001).

ARGUMENT

I. THE TRIAL COURTS INCORRECTLY HELD THAT RESPONDENT HAD A VALID CAUSE OF ACTION

During the hearing in Circuit Court on Appellant's appeal from the Magistrate Court judgment, Respondent argued: "Statute of limitations it is an ongoing rental agreement. It lasts forever until he comes and gets his boat. So, I don't think statute of limitations applies."

The law in South Carolina governing the storage of the boat in question is found within Section 29-15-10, et seq. Liens for repairs or storage of articles. For the purpose of this section, "article" means a ... watercraft" Section 29-15-10(G).

In order to create a lien, perfect the lien and enforce the lien, Respondent was required to take certain enumerated steps set forth within the statute. Written notice, by registered or certified mail; applying to the appropriate titling facility for the name and address of any owner or lienholder; waiting the appropriate period of time before applying to the magistrate court to enforce the lien. Sections 29-15-10(A)(B) and (C). But DP Marine's owner, David Pou, freely and voluntarily chose his own personal satisfaction and pleasure over the law and money. And in doing so, he waived whatever rights or claims DP Marine could have availed itself of.

II. DP MARINE SAT ON ITS RIGHTS, CHOOSING TO VOLUNTARILY WAIVE WHATEVER CLAIM IT MAY HAVE HAD.

For more than sixteen years Respondent, DP Marine sat on its rights. And it did so at its own peril. And by sitting on its rights it has waived any claim or cause of action or lien it may have had, had its owner, David Pou not chosen gratification over asserting DP Marine's rights.

CONCLUSION

The Magistrate Court lacked subject matter jurisdiction. The judgment flies in the face of the law in South Carolina. The judgment against Appellant should be vacated and Respondent's claim dismissed with prejudice.

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CERTIFICATE OF SERVICE

I hereby certify that I mailed a true copy of Appellant's Initial Brief to the following counsel of record on this 7th day of October, 2024:



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