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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.

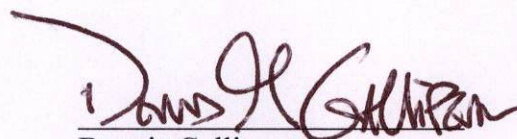
DP Marine,

Respondent.

RECORD ON APPEAL

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Dennis Gallipeau, pro se
PO Box 210134
Columbia, SC 29221

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP3200158

Dennis Gallipeau
PLAINTIFF(S)

DP Marine
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the Court by way of an appeal from Magistrate Court. Plaintiff filed a summons and complaint requesting relief of \$7500 for damage to his boat while stored at the Defendant's place of business. At the bench trial, Plaintiff presented evidence and testimony seeking damages that exceeded the jurisdiction of the Magistrate Court. Plaintiff was then given the option to have this case dismissed with leave to reassert the claims in a higher court. The record shows the Plaintiff clearly stated he no longer wished to proceed with the matter in Magistrate Court and requested dismissal. Defendants then indicated they wished to proceed on their counterclaims for the storage fees. The record shows the Defense presented credible evidence and testimony as to the Plaintiff's failure to pay the storage fees. As Defendant's counterclaims were to the only matter left before the magistrate court, this Court finds evidence and testimony supports the ruling and hereby AFFIRMS.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/07/2024 .

Dennis Gallipeau for Dennis Gallipeau
Dennis Gallipeau for Dennis Gallipeau

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Lexington Common Pleas

Case Caption: Dennis Gallipeau VS DP Marine
Case Number: 2024CP3200158
Type: Order/Electronic Form 4

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2024-08-07 15:32:14 page 3 of 3

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS 2024CP3200158

IN THE MAGISTRATE'S COURT 2023CV321071650

DENNIS GALLIPEAU

PLAINTIFF,

VS.

D P MARINE,

DEFENDANT

RETURN TO APPEAL

THIS MATTER CAME BEFORE The Honorable Rebecca L. Adams, Magistrate, Lexington County, South Carolina on December 11, 2023 as a Bench Trial for a Summons and Complaint and Counterclaim.

The Plaintiff, Dennis Gallipeau, appeared and represented himself. The Defendant appeared and was represented by Attorney Ed Boggs.

The Plaintiff filed a Summons and Complaint requesting damages from the Plaintiff in the amount of \$7500 for damage to his boat while in storage at the Defendant's place of business. Also, the second portion of the Plaintiff's claim was for refund of a money order in the amount of \$400 sent to the Defendant to possibly do repairs to the boat.

The Defendant's Counterclaim was for damages in the amount of \$7500 which was owed for storage of the Plaintiff's boat from 2007 to 2023. The Defendant testified that he was not contacted personally by the Plaintiff during this time.

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. The Court stated to the Plaintiff that the testimony he was giving at that time was not included in his complaint and those damages would drastically exceed the jurisdiction of the Court. The Plaintiff was given the option to have his case dismissed and proceed at another time in a higher Court. The Plaintiff clearly stated he did not wish to move forward with the damages of his boat at this time. At that point the only matter for this Court to decide was the issue of the \$400 paid to the Defendant. The Defendant stated that they would gladly return the \$400 to the Plaintiff because before they had any opportunity to do any work to the boat the Plaintiff filed this Complaint. It is the belief of this Court that the \$400 in question would be returned to the Plaintiff.

The Defense stated that they wanted to proceed with their Counterclaim at that time. The Defense called Joy Pou, Office Manager for D P Marine and David Pou, owner of D P Marine. Both witnesses testified that the Plaintiff had brought his boat to them originally for a short term storage but failed to pick it up or pay the storage fees in full from 2007 to 2023. While there was extensive testimony from all parties, this was the only matter before the Court at this time.

After reviewing all evidence and testimony, this Court ruled for the Defendant in the matter of the Counterclaim awarding the Defendant a Judgment for \$7510 which includes the filing fee. In preparing this Return the Court realized they had awarded the Defendant \$80 for the filing fee which was incorrect. This has been corrected on the Order.

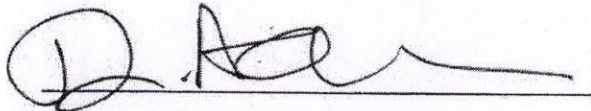
In response to the Plaintiff's appeal

- 1) This Court does believe the evidence and testimony supports the ruling of this Court.
- 2) The Appeal does not state any significant errors committed by this Court. An Objection was made by the Plaintiff that he objected to some evidence submitted by the Defendant but he could not state any legal reason for the objection so it was overruled.
- 3) The Court is confident jurisdiction lies with this Court and the Statute of Limitations did not Begin to run until the Defendant had knowledge that the Plaintiff was refusing to pay the storage fees.

In closing, the Plaintiff moved that this Court dismiss his damage claim filed against the Defendant for damage to his boat. Therefore, this Return contains only information from the trial that is pertinent to the \$400 in the original complaint and the Counterclaim filed by the Defendant.

Copies of exhibits are included and originals are available upon request.

Respectfully submitted this 24th day of January, 2024



Rebecca L. Adams, Magistrate,

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE IRMO MAGISTRATE'S COURT
Case No.: 22023CV321071650

Dennis Gallipeau,)
)
Plaintiff,)

v.)

ANSWER AND COUNTERCLAIM

DP Marine,)
)
Defendants.)
_____)

NOW COMES Defendant DP Marine, by and through his attorney Edward C. Boggs and Answers the Complaint and brings a Counterclaim.

ANSWER

1. Defendant DP Marine denies each and every allegation contained in the Complaint not hereinafter specifically admitted and strict proof is demanded thereof.
2. As to paragraph 1 of the Complaint, Defendant does not have sufficient information to Admit or Deny and therefore specifically denies.
3. Defendant admits to paragraph 2 of the Complaint.
4. As to Count I of the Complaint, Defendant denies each and every paragraph and demands strict proof thereof.
5. As to Count II of the Complaint, Defendant denies each and every paragraph and denies strict proof thereof.

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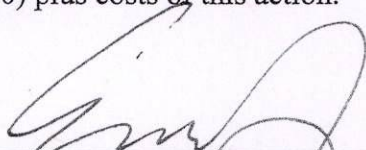
IRMO MAGISTRATE

BY WAY OF COUNTERCLAIM

The Defendant/Counterclaimant, DP Marine would respectfully show unto the Court:

6. Defendant/Counterclaimant, DP Marine is a boat repair and storage facility located on Wessinger Road in Lexington County South Carolina.
7. That Plaintiff Gallipeau, on or around November 2, 2007, entered into a short term storage agreement to store his boat for a month-to-month rental for Fifty and no/100ths (\$50.00) Dollars a month.
8. That, to date, the boat has been stored at DP Marine facility for in excess of Sixteen (16) years.
9. That, to date, Plaintiff owes Defendant/Counterclaimant in excess of Eight Thousand, Eight Hundred, Fifty and no/100ths (\$8,850.00) in back unpaid storage fees.

WHEREFORE, Defendant/Counterclaimant demands the dismissal of Plaintiff's claims and prays for Judgment against the Plaintiff in the amount of Seven Thousand, Five Hundred and no/100ths (\$7,500.00) plus costs of this action.



EDWARD C. BOGGS
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Lexington, South Carolina 29072
Phone: (803) 359-6194
ecb@ecboggsllaw.com
Attorney for Defendant/Counterclaimant

Lexington, South Carolina
November 2, 2023

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1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 11
2 COUNTY OF LEXINGTON) COURT C.A NO. 2024-CP-32-00158

3
4 Dennis Gallipeau)
5 Plaintiff,)
6 Versus)
7 DP Marine)
8 Defendant.)
9

10 H E A R I N G

11
12 DATE: May 15, 2024

13
14 LOCATION: South Carolina Circuit Court 11

15
16 JUDGE: Walton J. McLeod

17
18 TRANSCRIBED BY: ERIN REILLY

19
20 LEGAL EAGLE

21 Post Office Box 5682

22 Greenville, South Carolina 29606

23 864-467-1373

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25

R 8

PROCEEDINGS

1
2 THE COURT: All right. Next Matter. Mr. Gallipeau
3 versus DP Marine. Ms. Cannon, how are you?

4 MS. CANNON: Morning, judge.

5 MR. GALLIPEAU: Morning, Your Honor. Dennis
6 Gallipeau present

7 THE COURT: Mr. Boggs, Ms. Cannon and Mr. Gallipeau?
8 Good morning, everybody.

9 MR. BOGGS: Good morning, Judge.

10 THE COURT: Let me pull this file up, real quick.
11 So, sir, this is Magistrate Court of Appeal. Is that accurate?

12 MR. GALLIPEAU: Yes, Your Honor. This is the
13 Plaintiff's appeal of a magistrate court judgment entered on a
14 counterclaim filed by Defendant DP Marine.

15 THE COURT: And what is the -- I'm trying to read but
16 what's the -- what do you assert the magistrate got wrong, just
17 so I can be clear about that?

18 MR. GALLIPEAU: As I set forth, Your Honor, excuse
19 me, In the notice of appeal. The -- this appeal is filed on
20 the grounds that the evidence and testimony does not support
21 the Court's finding and judgment and that the Court lacked
22 jurisdiction and ignored the statute of limitations. It is at
23 the Defendant's DP Marine's counterclaim contained in their
24 answer to my original complaint.

25 Paragraph 7 states that Plaintiff on or around November

1 2nd, 2007, entered into a short-term storage agreement to store
2 his boat for a month-to-month rental.

3 Paragraph 8 of the counterclaim states that to date
4 the boat has been stored at DP Marine Facility for in excess of
5 16 years. Paragraph 9, that to date, Plaintiff owes Defendant
6 counterclaim in excess of \$8,000. It is the Plaintiff's
7 position that whatever cause of action DP Marine may have had
8 for the short-term storage of the Plaintiff's boat expired at
9 least 15 years ago and that DP Marine had and has no viable
10 claim for the short-term storage of the boat. And therefore,
11 the Court lacked jurisdiction to even entertain a claim in
12 which the statute of limitations had expired 15 years earlier
13 and I'm asking the Court to vacate the magistrate court
14 judgment.

15 THE COURT: Okay. Mr. Boggs, are you here for DP
16 Marine?

17 MR. BOGGS: Yes, Your Honor. Here on the -- I'm here
18 on DP Marine for the appeal.

19 THE COURT: All right. Happy to hear your response.

20 MR. BOGGS: May it please the Court, Your Honor?

21 THE COURT: Sure.

22 MR. BOGGS: Judge, this came by way of a lawsuit that
23 was actually brought by Mr. Gallipeau against DP Marine
24 alleging damages to his boat. We denied that in our
25 answer, filed a counterclaim. It is true that the boat

1 had been in the possession of my clients for 16 years
2 while Mr. Gallipeau was to be kind of indisposed. He was
3 not able to receive the boat, they held onto the boat for
4 16 years. He filed this claim saying that there was
5 damage done to the boat. Judge, it was everyday damage,
6 if you will, that if a boat sits outside for 16 years,
7 there was some damages done to the boat. He further
8 alleged that -- and when we say damage, we just mean
9 simply from being outdoors, no actual damage other than
10 what was caused by the weather.

11 He also filed a claim for \$400 saying that he had
12 delivered money to DP Marine to do some work on the boat
13 recently. During the actual trial of the matter, prior to
14 taking testimony, the Judge asked some questions and we agreed
15 to refund the \$400 that we held and did not perform the work.
16 We actually refunded that after the trial and that check was
17 actually negotiated. We counterclaimed for \$7,500 and even
18 though we laid out that in our pleadings that it was \$8,850
19 that was owed at the time, our pleadings actually asked for
20 judgment against the Defendant for \$7,500 plus costs.

21 THE COURT: Where is DP Marine -- I'm little. Is
22 that a marina or?

23 MR. BOGGS: It's an actual -- it's over in Hilton
24 near Chapin.

25 THE COURT: Okay.

1 MR. BOGGS: And it's a boat repair facility and
2 storage facility. So --

3 THE COURT: Okay.

4 MR. BOGGS: The boat was left there some 16 years and
5 Mr. Gallipeau showed back up on the scene, 16 years later
6 wanted to have the boat repaired, paid some money to have the
7 boat repaired to have it cranked. My clients never did any of
8 that work, so we returned the \$400 to him. But during the
9 appeal -- I mean, during the case, we -- again, counterclaimed
10 for the storage facility fees, presented evidence showing when
11 they got the boat, how long the boat had been there.

12 I think the Judge took all that into consideration when we
13 did -- during the trial. Judge, he also had filed claims for
14 damages against the boat, but just prior to testimony he tried
15 to make it clear to the court that he was only alleging damages
16 to the interior of the boat and not the exterior. That the
17 exterior damages he believed were in excess of \$50,000.

18 I certainly made an argument at that time that I
19 thought that that may be barred by Res Judicata. So, the judge
20 gave him the ability to dismiss his claims for the damages
21 because it appeared that he was going to bring those claims in
22 a higher court, which since then he has done. And I think that
23 Ms. Cannon is defending that case for the insurance company.
24 But we would -- Judge, I know you sit pursuant to Section 187-
25 170, you sit in a position of more or less first impression.

R 12

1 You don't have to consider the decisions made by the lower
2 court judge. You can look at the -- at this as a whole. I
3 would ask you to look at the evidence in this case. I think
4 you should give some credibility to the fact that Judge Adams
5 was there. She heard the testimony, but you're not bound by
6 those you can make your own decisions.

7 But Judge, statute limitations it is an ongoing
8 rental agreement. It lasts forever until he comes and gets his
9 boat. So, I don't think statute of limitations applies and he
10 never raised statute of limitations at the lower court. So, I
11 don't think that statute of limitations is an issue, he didn't
12 plead it. He didn't raise it at the lower court, statute of
13 limitations, I think is out.

14 The \$400 that he requests during the previous court case,
15 we've returned that to him. He's negotiated. I think the only
16 reason that we're here today is he's appealed the award of
17 \$7,500 saying that it doesn't -- the evidence doesn't support
18 that. I think you can look at the evidence that are -- that's
19 in the return and from the Court and you can clearly see that
20 money was owed for the storage of this particular boat for in
21 excess of 16 years.

22 MR. GALLIPEAU: Your Honor, may I respond?

23 THE COURT: Certainly.

24 MR. GALLIPEAU: First of all, I did raise the statute
25 of limitations at the trial. Counsel, has talked about

R 13

1 everything under the sun except the statute of limitations.
2 The storage of a boat, whether it's a short-term storage or a
3 long-term storage, is governed by South Carolina Law Section
4 29-15-10, which is liens -- I'm sorry, liens or repairs or
5 storage sale of articles. Under the law, DP Marine had a
6 statute of limitations within which to bring their claim for
7 the storage of the boat and they have to create a lien. They
8 have to perfect the lien; they have to enforce the lien.
9 They've done none of those. By his own testimony today by what
10 the lawyer just told you, this claim comes 15 years too late.
11 The Defendant knew --

12 THE COURT: Okay. Let me ask a quick question, what
13 is the monthly fee for storage at DP Marine?

14 MR. GALLIPEAU: Well, there was disagreement about
15 that as well. Originally, the Plaintiff was under the
16 impression it was \$35 a month but the Defendant, DP Marine
17 claims that it's \$50 a month. DP Marine called two witnesses
18 to testify. Both David and Joyce Poe. Both of the Poe's
19 testified that the Plaintiff made one small payment for the
20 storage in 2007 and that a friend of the Plaintiffs made a
21 onetime small payment in 2008. There has been no payment made
22 in over 15 years and I would argue, Your Honor, that the
23 statute of limitations began when DP Marine knew, or by
24 exercise of reasonable diligence, should have known that it had
25 a cause of action.

R 14

1 DP Marine knew that more than 15 years ago, when
2 there were no payments for the storage of the boat and in the
3 case of Wiggins versus Edwards 314, South Carolina 126, a 1994
4 case, Your Honor, the Supreme Court held that the limitations
5 period is intended to run against those who are neglectful of
6 their rights and who failed to exercise reasonable diligence in
7 enforcing their rights.

8 DP Marine sat on its rights by the -- by what Your
9 Honor has already heard today and by the pleadings and by the
10 Her honors return of the appeal, DP Marine has sat on its
11 rights now for more than 15 years. It has no cause of action
12 and as for this ongoing issue, there is case law about that as
13 well, Your Honor. Vines, V-I-N-E-S versus South Memorial
14 Hospital, 443 Southeast 2nd, 909, another 1994 case repeated
15 promises to pay does not equitably stop the Plaintiff from
16 relying on the statute of limitations.

17 There is no estoppel on this issue nor in light of
18 Plaintiff's repeated unfulfilled promises and to be said that
19 any reliance on Plaintiff's assurances was reasonable. It was
20 completely unreasonable to DP Marine to wait 15 years to bring
21 this claim. Under the law, their claim expired 16 years ago,
22 Your Honor, because the only --

23 THE COURT: To be clear, you brought the claim and
24 then they filed the counterclaim and that accurate --

25 MR. GALLIPEAU: My claim is in part --

R 15

1 THE COURT: Well, I just -- no, I'm not talking about
2 the merits of your claim. I'm just saying the counterclaim was
3 in response to your lawsuit that you filed?

4 MR. GALLIPEAU: Yes.

5 THE COURT: And my only question is this and I'll
6 review this when I take it under advisement, but on one hand --
7 sure. They stored the boat for 15 some odd years, obviously
8 for a chunk of time that you were unavailable to pay rent.
9 Okay. That's neither here nor there. But also -- wouldn't
10 they have at least some right to payment at least for the last
11 three years at the bare minimum?

12 MR. GALLIPEAU: Your Honor. No, because their -- the
13 statute -- Your Honor, when you read 629-15-10, they had, I
14 believe, under the law, I think it was 60 days or even less
15 than that. It could have been even less than 60 days to file -
16 - to create the lien, to perfect the lien and then to enforce
17 them.

18 THE COURT: Let me ask you this. During the last 15
19 years, would they have been -- is it your belief they would've
20 been their rights just to put your boat out in a pasture and be
21 done with it instead of storing it on their property?

22 MR. GALLIPEAU: It -- only if they had complied with
23 the requirements of Section 29-15-10, they could have but they
24 chose not to. They sat on their rights, Your Honor, and as
25 Your Honor knows, a party who sits on their rights does so at

R16

1 his or her I can't think of the word I --

2 THE COURT: Their own peril perhaps

3 MR. GALLIPEAU: At their peril, not mine.

4 THE COURT: Okay. All right.

5 MR. GALLIPEAU: I asserted my rights timely, the DP
6 Marine has not. They have no viable cause of action, Your
7 Honor.

8 THE COURT: All right. It's a pretty -- it's about
9 22 pages of [indiscernible] return I'll read. Ms. Cannon,
10 anything you want to add?

11 MS. CANNON: Your Honor, the only thing I would add
12 is that Mr. Gallipeau has filed two lawsuits that appear to
13 have the exact same allegations not pertaining to the appeal.
14 This is where he has asserted the causes of action that the
15 magistrate allowed him to dismiss without prejudice. I
16 understand that he can proceed on those, although Mr. Boggs and
17 I would assert there's res judicata in place. It appears the
18 magistrate's order allows him to proceed without prejudice on
19 those. I wish that he would perhaps pick one lawsuit or the
20 other.

21 I've filed motions to dismiss in this one that
22 includes the appeal and then there is a second complaint filed
23 in 2024CP3201092. It's the exact same causes of action. So, I
24 would request that the Court and perhaps Mr. Gallipeau will
25 just voluntarily dismiss one or the other lawsuit so we can

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