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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY

Richard L. Hinson, Special Referee
SC Bar # 15082

Appellate Case No. 2024-001025

Carroll D. Brown,

Appellant,

v.

John M. Baker dba Humpty Dumpty,
Mobile Home Park and Dream Home
Properties, LLC,

Respondent.

INITIAL BRIEF OF APPELLANT

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2013 WL 6050324 (4th Cir 2013)

STATEMENT OF ISSUES ON APPEAL

1. Did the Special Referee err in failing to identify each category of damages awarded rather than simply awarding a lump sum of damages?
2. Did the Special Referee err in allowing hearsay testimony concerning the value of market rent for mobile homes?
3. Did the Special Referee err in finding that the Appellant's destruction of some documents allowed Respondent to present speculative evidence concerning his damages?

STATEMENT OF THE CASE

This matter was commenced by Appellant filing a Summons and Complaint against the Respondent seeking to enforce a Partnership Agreement between the Appellant and Respondent. Respondent filed an Answer and Counterclaim alleging breach of fiduciary duty and conversion by Appellant. Respondent filed a Motion for Summary Judgement and the Circuit Court granted Summary Judgement against the Appellant on these two Counterclaims. By consent, an Order of Reference was issued by the Circuit Court referring the matter to Richard Hinson, as Special Referee, for a hearing on damages. This hearing was held on June 4, 2024. The Special Referee issued his Order on June 5, 2024, awarding the Respondent \$301,150.00 in damages against the Appellant. This Appeal to the Court of Appeals followed.

STANDARD OF REVIEW

The Standard of Review refers to the level of deference Appellate Court gives to the lower Courts decision. Here the Special Referee made certain findings of fact which can only be overturned by the Court of Appeals if there is clear error based on the evidence presented.

ARGUMENT

1. Did the Special Referee err in failing to identify each category of damages awarded rather than simply awarding a lump sum of damages?

The Respondent presented nine separate categories of damages (Respondent's Exhibit three (3) p. ____). The Respondent alleged a total of \$541,445.49 in damages. Detailed testimony with some documented evidence was presented by the Respondent on each of these nine categories. The Special Referee, in his Order, did not refer to any of the nine categories and did not identify which of the damages he allowed, and which ones he denied. It is impossible to determine which damages were allowed or denied. The Special Referee awarded a lump sum of damages in the amount of \$301,150.00. It is obvious that the Special Referee denied some portion of Respondent's damages based on the award since it is approximately only two-thirds of the damages claimed by Respondent. It is respectfully submitted the Special Referee's decision is deficient and does not allow Appellant to adequately appeal his decision. It is respectfully submitted that this matter should be remanded to the Special Referee with instructions to clearly identify the categories of damages he awarded, along with specific reasoning for each category of damages which was awarded.

2. Did the Special Referee err in allowing hearsay testimony concerning the value of market rent for mobile homes?

The Respondent testified that after he took back over the mobile home park, he talked to other people about what they were charging for rent on their mobile homes and determined that the Appellant was charging too little for rent.

(R- p. 82 - L. 22-25; p. 83; p. 84). The Appellant objected to this testimony as hearsay, but the Special Referee overruled Appellant and let the testimony in.

This was clear error. This is a significant error because Respondent alleged the less than market rent was \$100.507.50. Again it is impossible to determine what the Special Referee did with this category of damages because he did not identify the category of damages he awarded.

3. Did the Special Referee err in finding that the destruction of some documents allowed Respondent to present speculative evidence concerning his damages?

There are three elements of a spoliation claim.

1. That the party having control over the evidence had a duty to preserve it at the time it was destroyed;
2. That the evidence was destroyed with a culpable state of mind;
3. That the destroyed evidence was relevant to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense. Hawkins v College of Charleston
2013 WL 650324 (4th Cir. 2013)

The Appellant testified that he destroyed some receipt books and a ledger, in anger in July 2020, when the Respondent attempted to close him out of the partnership. (R. - p. 160 - L. 19-25; p. 161 - L. 1-25; p. 162 - L.19-25; p. 162 - L. 1-3) He further testified that he did not try to hide anything and that he still had the spreadsheets. No litigation had begun at that time. It is obvious that Appellant did not have a "culpable state of mind" when he destroyed some, but not all of the documents. It is respectfully submitted that Respondent's claim fo spoliation fails because he cannot prove the second element of spoliation. Therefore, the Special Referee erred in allowing Respondent to present highly speculative evidence concerning damages and Respondent's damages claims should fall away.

CONCLUSION

The Special Referee failed to identify the damages he awarded and it is impossible for Appellant to properly appeal the Special Referee's decision. It is respectfully submitted that this matter should be remanded to the Special Referee with instructions that he identify with specificity each category of damages awarded and explain the weight given to each.

The Special Referee allowed hearsay testimony on the issue of less than market rent. This testimony should be stricken and that element of damages disallowed.

The destruction of evidence by Appellant allowed the Special Referee to allow speculative evidence by Respondent as to his damages.

This was error by the Special Referee. The Respondent failed to prove the second element of spoliation and therefore, the Special Referee erred in allowing highly speculative evidence and the Respondent's claim for damages should fail.

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