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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Judge

Appellate Case No. 2023-001980

Jenna Robbins,..……...……..……...……...Appellant,

v.

Imfi3, LLC, D/B/A The Indigo At Cross Creek, Taft Management Group, Taft Family Ventures, and Southern-EEZ Landscaping, LLC, and Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping,

Of whom Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping is the……..……...Respondent.

FINAL REPLY BRIEF OF APPELLANT

Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
and
Kyle J. White
S.C. Bar No. 101426
Drew Bradshaw
S.C. Bar No. 100548
White Davis and White Law Firm, PA
Post Office Box 1346
Anderson, South Carolina 29622
(864) 231-8090
kyle@wdwlawfirm.com
drew@wdwlawfirm.com
Attorneys for Appellant

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STATEMENT OF ISSUES

I. **Did the circuit court err in refusing to amend the Respondent's name in a judgment, especially where there was only a highly technical name deviation that never misled the Respondent about who was being sued?**

II. **Did the circuit court err in its rulings on related motions, since its ruling on the judgment amendment issue was the premise for its rulings on the related motions?**

III. **Where the matters heard had been referred to a special referee, did the circuit court err in purporting to exercise subject matter jurisdiction and render decisions on them?**

ARGUMENT IN REPLY

The Respondent (hereinafter "the Defendant"), which does business under the name Southern-EEZ Landscaping, argues that the Appellant, plaintiff Jenna Robbins ("the Plaintiff"), is simply stuck in a situation in which the lower court's error cannot be addressed or reviewed. The Defendant does not spend much time on an argument that the decision below was correct in substance, and the argument it does make on that point seems to be circular, an argument that the lower court was right to find that the judgment was not against the Defendant because the lower court found that the judgment was not against the Defendant.

The Defendant is trying to hang on to a decision that defies South Carolina law on what to do about deviation in how a judgment debtor is named. In making that attempt, the Defendant argues that the law precludes any review of the decision at all. If that were the law, the law would be absurd. It is not the law.

The lower court's decision contravened the law of this state and is properly before this court for review and reversal.

I. South Carolina law provides for the amendment of judgments to reflect the names by which the judgment debtor is known, and the requirements for such an amendment were satisfied here.

The Defendant implies in its brief that there was no process available to the Plaintiff to have the judgment reflect the name the Defendant claims in this case to be its own, rather than only the name the Defendant led the world to believe was its own. As noted in the Plaintiff's brief, numerous cases, from almost a hundred years ago to the modern day, have recognized the right of the holder of a judgment to obtain an order that clarifies the name of the entity against which a judgment has already been obtained. Englert, Inc. v. Leafguard USA, Inc., 365 S.C. 565, 619 S.E.2d 12 (2005); Tri-County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C.

237, 399 S.E.2d 779 (1990); H & H Glass Co., Inc. v. Wynne, 289 S.C. 389, 346 S.E.2d 523 (1986); Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326 (1939); Tunstall v. Lerner Shops, Inc., 160 S.C. 557, 159 S.E. 386 (1931); Lee v. Storfer, 159 S.C. 70, 156 S.E. 177 (1930); McCall v. Ikon, 363 S.C. 646, 611 S.E.2d 315, 318 (Ct. App. 2005); Griffin v. Capital Cash, 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992).

The Defendant seems to argue there is no process to do this because to do so would expand the scope of the judgment. That is an incorrect premise. The grant of a motion such as the Plaintiff's to amend the name in a judgment does not expand the judgment's scope; rather, it merely notes that the judgment debtor identified in the judgment as X also goes by the name Y. Englert, 365 S.C. 565; Tri-County Ice and Fuel, 303 S.C. 237; H & H Glass, 289 S.C. 389; Long, 193 S.C. 225; Tunstall, 160 S.C. 557; Lee, 159 S.C. 70; McCall, 363 S.C. 646; Griffin, 310 S.C. 288. That is not even a substantive amendment. It simply clarifies the nomenclature.

Further, as discussed in the Plaintiff's appellant's brief, the record before the lower court established the Plaintiff's entitlement to such an order. E.g., Tunstall, 160 S.C. at 566. The Plaintiff directed her suit against the Defendant about activities the Defendant knew it performed, the Defendant knew that it was the entity subject of the suit and was the business named in the process as "Southern-EEZ Landscaping, LLC," and the Defendant offered no evidence (or even argument) that it was actually misled by the name discrepancy and offered no evidence that it thought the Plaintiff was suing someone else. (R. pp. 30-40, 188-205, 211-13, 232-39, 269-73, 278-301, 304-06, 357-59, 361-65.) *Knowing all of this*, the Defendant made a deliberate choice to default the complaint and cry foul about a most technical name discrepancy that never misled it. (R. pp. 232-39, 269-73, 278-301, 304-06, 361.) The

Defendant chose to play "a children's game," and, as is required by the numerous reported cases that deal with this issue, it was incumbent upon the lower court to recognize that the process served on the Defendant "names them in such terms that every intelligent person understands who is meant," and that thus "it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else." Englert, 365 S.C. at 565. Every person involved *did* understand who was meant. (R. pp. 30-40, 188-205, 211-13, 232-39, 269-73, 278-301, 304-06, 357-59, 361-65.)

What Tunstall actually holds is that, where an amendment of a judgment to correct or clarify a misnomer of the defendant is sought, it should be allowed where the amendment is "not so extensive as to substitute a new defendant, but was merely a correction of a mistake in the name of the defendant" and "the variation in names is not such as to indicate a different entity, and there is no suggestion that the [defendant] was misled to thereby to his prejudice." Tunstall, 160 S.C. at 566. That is simply consistent with the other cases that deal with this issue. Englert, 365 S.C. 565; Tri-County Ice and Fuel, 303 S.C. 237; H & H Glass, 289 S.C. 389; Long, 193 S.C. 225; Lee, 159 S.C. 70; McCall, 363 S.C. 646; Griffin, 310 S.C. 288. The record before the lower court showed that in this case.

The lower court misread Tunstall and grounded its decision in that misreading. (R. pp. 4-5.) The Plaintiff has pointed that out in her appellant's brief. In its brief, the Defendant does not argue that the lower court judge's interpretation of Tunstall was correct.

The lower court's decision is dependent upon an incorrect view of the law. It is right and proper for this court to reverse that decision, and the Plaintiff is entitled to such reversal.

II. Both law and good sense provide that the decision here is appealable.

The Defendant argues that there is no appealable order here. Not only is that inconsistent with existing Supreme Court precedent, Tunstall, 160 S.C. 557, it also does not make sense. When a motion to amend the name in a judgment is denied, at what later point would some appealable decision be made that embraces the issue? There is none. A denial like the lower court's here is the end of the line for the questions embraced in the issue of whether to amend the judgment debtor's name. The Defendant does not answer this question, as it wants this court to make a decision that precludes any review at all.

The lower court here ruled that "Southern Horticulture and Defendant Landscaping are legally separate entities," that "the Complaint and Summons asserted against Defendant Landscaping cannot be regarded as against Southern Horticulture[,]" and that "the Default Judgment also cannot be regarded as against Southern Horticulture." (R. pp. 4-5.) That is a final determination of the issue of whether the judgment is against the Defendant or against some other entity and is, thus, an appealable final judgment. S.C. Code Ann. § 14-3-330(1). It was also a final order on the Plaintiff's summary application – her motion to amend the judgment – made after the judgment was rendered, which puts it within the scope of S.C. Code Ann. § 14-3-330(3). It makes sense that our Supreme Court has heard and ruled on an appeal like this one. Tunstall, 160 S.C. 557.

There is neither guarantee nor even likelihood that the denial of a motion to amend the judgment debtor's name would be followed by some other appealable decision. The Defendant cites Pioneer Assocs. v. Ticor Title Ins. Co., 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989), and Pocisk v. Sea Coast Const. of Beaufort, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008), but those cases speak about the well-established rule that the grant of a motion that seeks relief

from a judgment is not appealable. The grant of such a motion is not the final determination of any matter and contemplates the issuance of a later, appealable order that will actually render a judgment. See id. at 588; Pioneer Assocs., 300 S.C. at 348. The situation at bar, as it would be with the denial of any motion like the Plaintiff's, is different in those respects. See Tunstall, 160 S.C. 557.

To accept the Defendant's argument on this point would make appellate review unreachable at any point on an issue that has been finally determined. That would be an absurd view of the law, and there is no indication that our General Assembly or our Supreme Court have taken such an unfair and illogical view. When faced with a party's contention of the meaning of statutory language, "courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly. If possible, the Court will construe a statute so as to escape the absurdity and carry the intention into effect." Duke Energy Corp. v. S.C. Dept. of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (internal citations omitted). Litigants in the position of the Plaintiff are entitled to orders like the Plaintiff sought, as noted above and in the Plaintiff's appellant's brief. To accept the Defendant's unappealability contention would create the absurd situation of a "wrong without a remedy" – something it is well established that both law and equity abhor. Messervy v. Messervy, 82 S.C. 559, 64 S.E. 753, 754 (1909); Key Corp. Capital, Inc. v. County of Beaufort, 360 S.C. 513, 602 S.E.2d 104 (Ct. App. 2004).

This is a proper appeal of an appealable order.

III. The Defendant has employed circular reasoning.

In its subject matter jurisdiction argument and throughout its brief, the Defendant cites the lower court's determination that the Defendant and Southern-EEZ Landscaping are not the

same entity as support for the correctness of that finding. If that confuses the reader, that is because the Defendant has engaged in the circular logical fallacy of *petitio principii*, assuming the initial thing, often called *begging the question*. This is circular logic.

While the undersigned cannot know the Defendant's mind, he suspects that this fallacy is employed because the record lacks evidence that supports the claim that the Plaintiff sued a different entity. Nothing in the record indicates the Plaintiff directed her suit at someone else, and everything in the record that speaks to the point establishes that the Plaintiff and the Defendant knew the lawsuit was directed at the Defendant. (R. pp. pp. 30-40, 188-205, 211-13, 232-39, 269-73, 278-301, 304-06, 357-59, 361-65.)

CONCLUSION

The Plaintiff directed her lawsuit at the Defendant, using a name that the Defendant led the world to believe was its name. The Defendant understood that it had been sued. The Defendant's counsel, before they took a different position, knew that it was the Defendant that had been sued. For whatever reason, the lower court let the Defendant play and win at "a children's game[.]" Englert, 365 S.C. at 565. This error should be reversed.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
and
Kyle J. White
S.C. Bar No. 101426
Drew Bradshaw
S.C. Bar No. 100548
White Davis and White Law Firm, PA
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drew@wdwlawfirm.com
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Of whom Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping is the……...……...Respondent.

CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

Signature page follows

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
and
Kyle J. White
S.C. Bar No. 101426
Drew Bradshaw
S.C. Bar No. 100548
White Davis and White Law Firm, PA
Post Office Box 1346
Anderson, South Carolina 29622
(864) 231-8090
kyle@wdwlawfirm.com
drew@wdwlawfirm.com
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PROOF OF SERVICE

I certify that I have served the foregoing final brief on the date given below by emailing it to all opposing counsel of record at the address(es) noted below.

Brian E. Wolfe, Esq., at bwolfe@wolfegunst.com
Robert C. Gunst, Jr., Esq., at rgunst@wolfegunst.com
Joshua R. Hinson, Esq., at jhinson@wolfegunst.com
Mark S. Barrow, Esq., at msb@swblaw.com
Adam M. Crain, Esq., at amc@swblaw.com
Catherine C. Chase, Esq., at cchase@ycrlaw.com
Graydon V. Olive IV, Esq., at golive@ycrlaw.com

/s/ Andrew S. Radeker
Andrew S. Radeker, S.C. Bar No. 73743
Attorney for Appellant

March 20, 2025