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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price., Circuit Court Judge

Trial Court Case No.
2015-CP-07-02047

Appellate Case No. 2023-000222

James R. Brady ..... Respondents,

V.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman ..... …Petitioners.

PETITIONERS' PETITION FOR A WRIT OF CERTIORARI

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I. CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on April 17, 2025.

II. QUESTIONS PRESENTED

A. Did the Court of Appeals err in affirming the decision to refuse a Directed Verdict or Motion Notwithstanding the Verdict in this matter where the evidence showed the only agreement the Respondent had was with two Limited Liability Companies dismissed by the Respondent at the start of trial where merger clauses show that those agreements superseded any and all prior representations and warranties so that the remaining Petitioner Gary Grossman had no agreement with the Respondent?

B. Did the Court of Appeals err in affirming the decision to not rely upon the Statute of Frauds to grant a Directed Verdict or Judgment Notwithstanding the Verdict where the chief document relied upon by the Respondent was an unsigned letter for work to be performed longer than in the span of one year from the making of the letter?

III. STATEMENT OF THE CASE

This matter is before this Court on a Petition for Certiorari following the final decision from the South Carolina Court of Appeals dated March 12, 2025 and denial of re-hearing dated April 17, 2025. (Up. Op. No. 2025-Up-086; Order Denying Petition for Rehearing) The Court of Appeals affirmed the Order of the Honorable Bentley D. Price dated January 13, 2023. (ROA 1-6) In that Order, Judge Price denied the Defendant Gary Grossman's motion for a judgment notwithstanding the verdict and/or vacation of judgment pursuant to Rule 50(b) SCRCivP filed September 7, 2023 (ROA 44-46)

This case commenced with the filing of a Summons and Complaint on August 25, 2015.[1] (ROA 180-189). In his Complaint, the Plaintiff asserted causes of action for breach of contract, quantum meruit, and conversion arising out of his former employment to market and sell homes at developments on Hilton Head Island. *Id.* There are no causes of action for fraud or negligent misrepresentation. *Id.*

[1] There was an earlier case between these parties which was dismissed pursuant to Rule 40(j). *See Brady v. Hilton Head Homes at Allenwood*, 2009-CP-07-2690 (ROA 26-27). The current case started anew with the filing of the Summons and Complaint on August 25, 2015

The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development, LLC, are South Carolina limited liability companies. *Id.* The Defendant Lancaster Redevelopment Corporation is a Pennsylvania corporation. *Id.* Gary Grossman is an individual residing in Pennsylvania. *Id.* Lancaster Redevelopment Corporation is sole Member of Hilton Head Homes at Allenwood, LLC, and Village Square Development, LLC. (ROA 565-612). Mr. Grossman serves as the President of Lancaster Redevelopment Corporation. *Id.* The Plaintiff never had any employment agreement with Mr. Grossman, but, rather, with these entities. (ROA 625-627)

The Defendants filed their Answer and Counterclaim on September 14, 2015, setting forth affirmative defenses and causes of action against Mr. Brady. (ROA 170-179). In the Answer and Counterclaim, the Defendants asserted that pursuant to an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development, LLC, and Lancaster Redevelopment Corporation in connection the construction, sales, and marketing of certain development in Beaufort County. *Id.* The Defendants alleged that loans and advances were given to the Plaintiff for work which was not performed and for which the Defendants would be repaid prior to any distributions to be made to the Plaintiff. *Id.* The Defendants further alleged that the Plaintiff failed to perform so that the Defendants had to hire third parties to complete the Plaintiff's job. *Id.* Hilton Head Homes at Allenwood, LLC, Village Square Development, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars (ROA 245) The Defendants asserted causes of action against the Plaintiff for breach of contract and unjust enrichment for actual damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial. *Id.*

On July 27, 2016, the Plaintiff submitted his Reply to Counterclaim [sic] setting forth some affirmative defenses. (ROA 162-169)

Discovery commenced, including the taking of an out of state deposition of Ms. Ginger Griffith, who has worked for Lancaster Redevelopment Corporation as treasurer until the company succumbed to the Great Recession in 2010. (ROA 509-555).

The Respondent filed a Motion for Summary Judgment as to the Petitioners' Counterclaims on January 1, 2015. (ROA 141-143).

While the motion was pending, the parties participated in mediation which resulted in a provisional settlement which ultimately fell apart. (ROA 490-508).

The hearing of the Respondent's motion for summary judgment was continued by consent due to scheduling conflicts, including mandatory evacuations order during one of the times the motion was scheduled to be heard. (ROA 23-25).

The parties filed a Consent Motion for an Order of Protection and for a Status Conference to Set a Trial Date Certain. (ROA 136-137)

The parties also filed their Memoranda in Support and in Opposition to the Plaintiff's Motion for Summary Judgment on February 4, 2019. (ROA 47-63).

The Motion was heard by the Honorable J. Mark Hayes, II, on February 6, 2019, in Beaufort who, two days after the motion hearing, entered his Form 4 Order granting the Plaintiff Summary Judgment. (ROA 18-20).

The case was then appealed to this Court by Notice of Appeal dated February 8, 2019. (ROA 157-161). Judge Hayes' Final Order was filed March 1, 2019, while this appeal was pending. (ROA 15-17) This Court heard the appeal of the Order of the Honorable J. Mark Hayes, II, dated February 8, 2019. (ROA 18-20) This Court denied that appeal. (ROA 11-14).

The case came to trial before the Honorable Bentley D. Price on August 29 and 30, 2022. (ROA 204-482)

At the beginning of the trial of this case on August 29, 2022, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment

Corporation were dismissed by the Plaintiff. (ROA 365-366). Only the Defendants Hilton Head Homes at Allenwood, LLC and Village Square Development, LLC, have any written agreement with the Plaintiff. (ROA 366) Lancaster Redevelopment Corporation was the only member of those two limited liability companies. (*Id.*) There were Assignments from 2004 in which the Plaintiff and another individual agreed to be members of those limited liability companies. (ROA 367). Judge Price allowed the corporate defendants to be dismissed. (ROA 382-383)

At the close of evidence, the Defendant moved to amend his answer to assert a Statue of Frauds defense under Rule 15(b) SCRCivP as well as for a directed verdict on all causes of action: breach of contract, quantum meruit, conversion, and for the demand for punitive damages. (ROA 303-310) As quantum meruit was an equitable claim, it did not go to the jury, by stipulation. (ROA 308-309). Judge Price denied the motion for a directed verdict as to the breach of contract claim and ruled that the quantum meruit claim was for his determination. (ROA at 39). He also declined to charge punitive damages at that time. *Id.* He also denied the motion as to the conversion cause of action. *Id.*

The jury received the case after Judge Price's charges and closing arguments. (ROA 350-351) After deliberations, the jury returned a verdict against the Defendant for $711,027.00 finding a breach of contract by Gary Grossman and for damages for conversion in the same amount. (ROA 7-10)(ROA 353-354).

After the verdict, Judge Price directed a verdict in favor of Mr. Grossman as to punitive damages and as to quantum meruit. (ROA 155-156).

On September 7, 2022, Mr. Grossman moved for a judgment notwithstanding the verdict and/or vacation of judgment pursuant to Rule 50(b) SCRCivP. (ROA 44-46) Judge Price heard that motion on November 2, 2022. (ROA 483-487) By Order of January 12, 2023, Judge Price denied the motion. (ROA, 1-7) . Mr. Grossman appealed following the denial. (ROA 144-156)

On March 12, 2025, the South Carolina Court of Appeals affirmed Judge Price's denial of a judgment notwithstanding the verdict and/or vacation of judgment pursuant to Rule 50(b) SCRCivP. (Up. Op. No. 2025-UP-086)

V. ARGUMENT

Question 1: Did the Court of Appeals err in affirming the decision to refuse a Directed Verdict or Motion Notwithstanding the Verdict in this matter where the evidence showed the only agreement the Respondent had was with two Limited Liability Companies dismissed by the Respondent at the start of trial where merger clauses show that those agreements superseded any and all prior representations and warranties so that the remaining Petitioner Gary Grossman had no agreement with the Respondent?

The Court of Appeals erred in affirming the lower court's decision to not grant a directed verdict and, subsequent, a judgment notwithstanding a verdict where the Entire Agreement language contained in the Paragraph 9.5 of the Assignments set forth entire agreement and language and merged all representations into those Assignments.

As set forth above, language is as follows:

> 9.5 Entire Agreement. This assignment constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this assignment will be binding unless executed in writing by all parties.

(ROA 613-624)

With such language in place and relied upon and agreed to by Mr. Brady, his reliance on any earlier representations from an unsigned letter February 2004 is misplaced and should have led to a directed verdict and JNOV.

Any reliance on any other document is misplaced as the Assignment contained the entire agreement of all which were merged into Assignment language. This case is analogous to *Wilson v. Landstrom*, 281 S.C .260, 315 S.E.2d 130 (Ct. App. 1984) in which this Court went through the doctrine of merger arising out of a deed, another form of contract. Citing the Supreme Court case of *Charleston Western Carolina Railway Co. v. Joyce* (1957), this Court expounded as follows:

> The doctrine of merger is founded upon the privilege, which parties always possess, of changing their contract obligations by further agreements prior to performance. The execution, delivery, and acceptance of a deed varying form the terms of antecedent contract indicated an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed. [Citations omitted.} **** **Where there is no mistake or fraud** a deed executed subsequently to the making of an executory contract for the sale of land is generally regarded as conclusive evidence of a previous modification of the executory contact. A deed executed subsequent to the make of an executory contract for the sale of land surpasses that contract.

231 S.C. at 504-505, 99 S.E. 2d 1983(quoting with approval from *Snyder v. Roberts*, 45 Wn.2d 865, 278 P.2d 348 (1955), and from 55 Am.Jur., Vendor and Purchaser, Para. 327)(emphasis added)

The same should be said to this case as to contracts entered into after any alleged agreement to enter into an agreement and which contains Entire Agreement language without any fraud or mistake. Here, there is no fraud or mistake alleged. There was no evidence of either presented or pled. This has been good law in South Carolina for over two hundred years. The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior contemporaneous agreements not included in the writing. *Wilson*, *id.* at 260, 315 S.E2d 130; *Armour Fertilizer Works v. Hyman*, 120 S.C. 375, 113 S.E. 330 (1922); *M'Dowall v. Beckly*, 9 S.C.L. (2 Mill)(1818). The Assignments were completely integrated agreements by and between Mr. Brady and two of the Defendants which he dismissed. All representations and agreements were contained therein and the trial court should have granted its directed verdict, and, subsequently, its JNOV.

Similarly, in *Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003), this Court examined an entire agreement clause contained in a partnership withdrawal agreement. *Id.* That withdrawal agreement contained language similar to that of Paragraph 9.5 in the Assignments at issue in this case stating it contained the "entire agreement and understanding" between the parties. *Id.* In *Redwend*, the trial court granted summary judgment to the withdrawing partner in a case alleging fraud and negligent misrepresentation stating the entire agreement language barred reliance by the other partner. *Id.* This Court disagreed due to the causes of action for fraud and negligent misrepresentation. *Id.* Neither of those causes of action were pled in this case. The Court cited the case relied upon by the trial court, which is on

point here: *One-O-One Enters., Inc. v. Varuson* , 848 F.2d 1283 (D.C.Cir. 1988). One may not reasonably rely on prior representations where the agreement "supersede[s] any and all previous understandings and agreements." *Id.* at 1286, as cited in *Redwend, id.* That is exactly what happened between the parties here. Mr. Brady cannot rely on unsigned letter from February of 2004 when the July of 2004 Assignments contained a valid and enforceable entire agreement clause. Mr. Brady admitted signing that document and admitted its language at trial (ROA 470) His reliance on any earlier agreement is barred and misplaced. Accordingly, the trial court should have granted a directed verdict as well as a judgment notwithstanding the verdict.

A contract with an Entire Agreement provision should be enforced as written unless there are allegations of fraud or negligent misrepresentation, none of which there are in this case. In *Slack v. James*, 364 S.C. 609, 614 S.E.2d 636 (2005), the Supreme Court examined a real property sales contract that contained an Entire Agreement provision. After entering into a sales contract, the buyer of the property discovered there was an sewer easement running across the property. *Id.* The buyers refused to close claiming they had asked the sellers' real estate agent about easements and that agent informed them there were none. *Id.* The sellers sued for breach of contract and the sellers counterclaimed for fraud, negligent misrepresentation and violations of the South Carolina Unfair Trade Practices Act (the UTPA). *Id.* The trial court dismissed the counterclaims for fraud, negligent misrepresentation, the UTPA, and parts of the buyers' breach of contract claim. *Id.* The trial court focused on the lack of reliance and the doctrine of merger. *Id.* This Court reversed. *Id.* The Supreme Court upheld this Court's ruling. *Id.* The entire agreement language "did not afford any protection to Sellers against allegations of fraud and negligent misrepresentation". *Id.* However, breach of contract or other claims are precluded by the parol evidence rule and the entire agreement language. *Id.* The same is true in this case. Accordingly, not granting a directed verdict or JNOV constitutes an error of law.

Question 2: Did the Court of Appeals err in affirming the decision to not rely upon the Statute of Frauds to grant a Directed Verdict or Judgment Notwithstanding the Verdict where the chief document relied upon by the Respondent was an unsigned letter for work to be performed longer than in the span of one year from the making of the letter?

The alleged agreement was not signed and violates the Statute of Frauds. S.C. Code Ann. §32-3-10(5) and Mr. Grossman cannot be charged with the terms thereof where it was never signed by him.

Mr. Brady agreed that the 2004 letter could not have been fulfilled within a year:

Q. So this agreement from 2004 was in place for well over a year; correct?

A. This was – this is what we agreed on to go forward with that development

(ROA 470) In fact, he said it would be "lead-up time" before the development would be up and running. *Id.* Failure to render that in a writing signed by Mr. Grossman makes it unenforceable.

As in *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d (1989), in this case there was not any contract that cannot be performed within one year must be in writing and signed by the parting against whom it is seeking to be enforced. S.C. Code Ann. §32-3-10. Also, a contract required to be in writing by the South Carolina cannot be orally modified. *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E2d 856 (1983)(court held evidence of oral modification of the real estate contract as violative of the Statute of Frauds). The Plaintiff argued part performance at trial. (Transcript Vol. II, pp 100-103). However, in order to remove an agreement from the Statute of Frauds, there must be acts related clearly and unequivocally to the agreement, exclusive of any other relation to between the parties touching such agreement. *Player, supra,* (citing *Aust v. Beard*, 230 S.C. 515, 96 S.E.2d 558 (1957); *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d. 173 (Ct. App. 1987)) Here, the evidence was that Mr. Grossman intended for there to be agreements with Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corporation which he acknowledged. (ROA 221) There was not testimony of actions by Mr. Grossman other than acknowledgment that these three companies owed Mr. Brady compensation (ROA 239; 296) Mr. Grossman stipulated that money was owed, just not by himself individually. (ROA 296-297) Mr. Grossman even agreed to lend ten thousand dollars ($10,000.00) to Lancaster

Redevelopment Corporation to give money to Mr. Brady for business development. (ROA 241-242) There was no evidence presented that Mr. Grossman ever did anything to lend credence to a partial performance individually. (ROA 204-482)

The Court should have allowed the amendment of the pleadings to conform to the evidence under Rule 15(b) SRCivP. Such amendments are to be liberally allowed when no prejudice to the opposing party will result. *Harvey v. Strickland*, 350 S.C. 303, 566 S.E.2d 529 (2002). Here, there is no prejudice when no party could produce a signed copy of the letter from 2004 and the entire case hinges upon that document, which violates the Statute of Frauds where the Plaintiff introduced the letter, discussed the letter at length, and where the evidence showed that Mr. Grossman intended for the corporate entities to be bound to the obligations to the Plaintiff. It was the Plaintiff who made this an issue throughout the trial, and the amendment should have been allowed.

CONCLUSION

For the reasons stated herein, the Petitioners ask this Court to grant their Petition for a Writ of Certiorari.

Mt. Pleasant, South Carolina
May 29, 2025

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