

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-21-2095

William K. Boon, Florence County Sheriff ET AL,Respondent,

v.

Carmichael T. Flowers,Appellant,

BRIEF OF APPELLANT

Other Counsel of Record:
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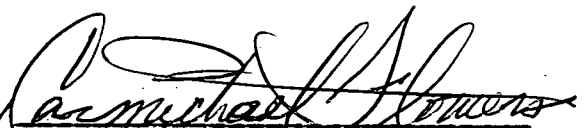
S. 
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STATEMENT OF ISSUE(S) ON APPEAL

I.

Did the lower court err in granting summary judgement in favor of the Respondent in light that the procedure by which the Respondent waived this Petitioner's right to ownership of his personal property constituted a denial of due process ?

II.

Did the lower court err in granting summary judgment for reasons that the Respondent could not be held personally liable absent any actual fraud... when the Respondent's own policy/procedural document, fail to disclose a material fact that constituted fraud?

STATEMENT OF THE CASE

Carmicheal T. Flowers, (hereinafter "Flowers"), was arrested and detained at the Florence County Detention Center, (FCDC), on October 3, 2008. In the process of being booked for detainment FCDC officials Namely, William K. Boon, Captain J. Bronson, Leah Harris, Joseph D. Thompson and Ann / John Doe, (Respondent), ordered that Flowers turn over all property in his possession. Flowers therefore relinquished property aggregating an amount of Five Thousand Dollars, (\$ 5,000), unto the possession of the Respondent. Flowers remained detained at FCDC for nine (9) month before he was convicted and committed to state prison. But when Flowers property did not accompany him to the department of corrections, Flowers contacted FCDC inquiring about his property and was informed by the Respondent that he had waived any and all rights of ownership to his property. Wherefore, Flowers commenced this civil action under the South Carolina Tort Claims Act, arguing that the manner and procedure by which the Respondent seized his personal property constituted a denial of due process. A hearing was held on March 21, 2013, at the florence county court of common pleas. The Honorable D. Craig Brown, in an order dated March 27, 2013, granted summary judgment in favor of the Respondent. [A. A 1-45] Flowers filed a timely notice of intent to appeal. Wherefore, the issue in dispute is now before this Court.

ARGUMENT / FACTS IN SUPPORT OF THE ISSUE ONE

Flowers argue that the lower court erred when it granted summary judgment in favor of the Respondent, being that the record is inconclusive to infer that he willfully abandoned his personal property or that he knowingly and intelligently waived his rights to ownership of his property. Flowers argues that the procedure by which the Respondent invalidated his rights to ownership of his personal property constituted a denial of due process under the State and Federal Constitution, because on one hand the Respondent's booking procedure made it mandatory that he turn over all his personal property unto their possession, while on the other hand such a procedure automatically invalidated his rights to ownership of his property ten (10) days after he was transferred to the state penitentiary. But no where within the record or within the Respondent's booking procedure, as supported by the Respondent's own procedural document entitled "Bates Stamped No. 7", [A. B1] was Flowers ever informed that if he was not released but instead committed to the state penitentiary, all his rights to ownership of his personal property would be invalidated. Flowers argue he signed "Bates Stamped No 7" acknowledging that he was only informed that if he was "released", any property left must be claimed within 10 business days. Moreover, Flowers argue it is for the reason that he was never released that he only signed one part of "Bates stamped No. 7", but not the part where detainees' sign substantiating that all their property had been returned to them on the day of their release. [A. B1]

Therefore, Flowers argue that the lower court erred in granting summary judgment under an erroneous assertion that he knowingly and intelligently abandon and waived his rights to ownership of his personal property and based upon this erroneous assertion, the lower court determined there existed no genuine issue of a material fact in dispute, when it is disputable as to whether, when he did not make bail or was not exonerated of his charges, but instead convicted and committed to state prison. Did his being convicted and committed to prison and not freed or exonerated constitute a "Release" so as to render the Respondent's abandonment of personal property procedure or involuntary waiver of ones ownership to personal property procedure as valid and constitutional.

(A "waiver" is a voluntary and intentional abandonment or relinquishment of a known right). See, Sanford V. South Carolina State Ethics Com'n 685 S.E.2d 600(S.C.2009)(Waiver requires a party to have known of a right and known he was abandoning that right). See, Eason V. Eason 682 S.E.2d 804(S.C.2009)(In order for a party to waive a right, the party must have known of the right and known that the right was being abandon). See, King V. James 694 S.E.2d 35(S.C. App.2010)

Flowers would reiterate that he was never specifically informed nor did he have any knowledge that if he was not " released " but convicted and sent to state prison. Such a fate alone would be considered an intentional abandonment and relinquishment of his rights to ownership of his personal property. And Flowers did not intentionally abandon his personal property or intentionally waive or relinquish his rights to ownership of his personal property.

(Summary judgment should be granted only when it is perfectly clear no issue of fact is involved). See, Dyer V. Moss, 325 S.E.2d 69, (S.C.1985) (Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law). See, Baril V. Aiken Regional Medical Center, 573 S.E.2d 830, (S.C. App.2002) (Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts). See, Tupper V. Dorchester County, 487 S.E.2d 187, (S.C.1997) (In determining whether summary judgment is appropriate, court must not try issues of fact, but must discern whether genuine issue of fact exist to be tried; if triable issues exist, those issues must go to jury). See, Rothrock V. Copeland 409 S.E.2d 366, (S.C.1991).

Therefore, Flowers argue that the lower court erred in granting summary judgment when there does exist a genuine issue as to whether when he sign the Respondent's document which provided that his property rights could only be waived "upon his release" and because he was never released but sent to prison. In these circumstances there exist a genuine issue of fact to be tried and this issue should have been submitted to a jury.

ARGUMENT / FACTS IN SUPPORT OF ISSUE TWO

Flowers would next argue that the lower court erred in granting summary judgment based upon an erroneous assertion that the Respondent was not personally liable for the loss of his personal property in the absence of any actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. [A. A3]
But Flowers would argue to the contrary, because when the

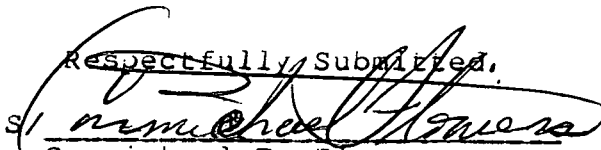
Respondent's property document "Bates Stamped No. 7", only disclosed that " upon [his] release " he had (10) business days to claim his property. But fail to disclose if he was convicted and transferred to the state penitentiary, his rights to his property would be waived or deemed as abandoned. Under these circumstances the Respondent fail to disclose a material fact. Therefore, Flowers would argue that under South Carolina Law, "Suppression of material fact which one is duty bound to disclose is equivalent to false misrepresentation." See, Landvest Associates V. Owens, 274 S.E.2d 433, (S.C.1981). Moreover, "Nondisclosure of a material fact may be deemed fraudulent when other party does not have equal opportunity to be appraised of fact." See, Hester V. New Amsterdam Cas. Co. ,287 F.Supp. 957, (D.S.C. 1968). The law further holds that, " Misleading statement, by stating only part of truth, may create legal liability." See, Thermoid Rubber Co. V. Bank of Greenwood, 1 F.2d 891, (S.C.1924). Therefore, Flowers argues, when the Respondent's property document "Bates stamped No.7", failed to disclose the fact that if he was not released but convicted and committed to prison, his personal property would be considered as abandoned and his right to ownership of his property would be considered as waived. The Respondent's procedural document misrepresented the facts and fail to disclose a material fact that consequently mislead Flowers to unknowingly and unintelligently abandon his property. But as previously stated; under South Carolina law, nondisclosure of a material fact may be deemed as fraudulent. Id., 287 F.Supp. 957.

Wherefore, summary judgment was inappropriate where there exist a genuine issue as to whether the Respondent's procedural document's nondisclosure of a material fact constitute a misrepresentation of the facts. so as to render not only the document, but the respondent's entire waiver of ones rights to personal property procedure as fraudulent. Therefore, summary judgment should have not been granted and this issue should have been submitted to a jury.

CONCLUSION

Wherefore, based on all the foregoing the lower court's grant of summary judgment should be reversed and the issues in dispute should be remanded for trial.

Executed on this 11th, Day of September, 2013

Respectfully Submitted,

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