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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Shannon M. Phillips, Master-in-Equity

Appellate Case No. 2023-001897
Case No. 2018-CP-42-01222

Opinion No. 6104 (S.C. Ct. App. Refiled April 16, 2025)

Erin Burns Anderson……………………………………………………………Petitioner,

v.

Rudy Lamar Pearson………………………………..…………………............Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Mr. Pearson argues in his Return (the "Return") that the "unanimous decision of the South Carolina Court of Appeals is consistent with prior decisions of the Supreme Court of South Carolina." (Ret., p.1).

It is not.

The court of appeals' opinion (the "Opinion") holds that a party to a contract is not estopped to enforce a contract deadline though that party knowingly misled the other party into missing the deadline, especially where there is a "time is of the essence" clause. That holding conflicts with Faulkner v. Millar, 319 S.C. 216, 221, 460 S.E.2d 378, 381 (1995), which was not even considered by the court of appeals in this case.

The Opinion holds that, in the context of equitable estoppel, the reasonableness of a party's reliance on the statements of another party can change over time based upon clues the relying party should have noticed, even where the other party continues to affirm the original statement and has the authority to do so. At a minimum, that holding creates a novel question of law. It is also completely inconsistent with one of the primary purposes of equitable estoppel, which is to prevent a wrongdoer from benefitting from her own wrongdoing. 28 Am. Jur. 2d Estoppel and Waiver § 28. ("Equitable estoppel generically precludes a party from asserting rights the party otherwise would have had against another when that party's own conduct renders the assertion of those rights contrary to equity.")

The Opinion holds, in conflict with a number of cases from this Court, that the loss of rights under a contract in reliance on the statements of another is not a sufficient change of position to constitute detrimental reliance.

The Opinion holds, in conflict with Ingram v. Kasey's Assocs., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000), and several other cases, that Dr. Anderson cannot seek specific performance because she did not tender her performance by the date of the deadline in the contract.

The Opinion misapplies the parol evidence rule, the merger clause, and the non-reliance clause to statements made after the contract had been entered into.

One of the reasons the Return is erroneous is because it ignores the facts of the case as the court of appeals found them and argues facts that the court of appeals did not find.[1] That is understandable because the court of appeals basically found that Mrs. Pearson lied to Dr. Anderson to defeat Dr. Anderson's rights under the contract. Anderson v. Pearson, 445 S.C. 455, 464, 914 S.E.2d 866, 871 (Ct. App. 2025). Mr. Pearson argues, for example, that Mrs. Pearson never promised to survey the entire tract. (Ret. at p. 12) Admittedly, if the court of appeals had agreed with that argument, the Opinion would read differently.

The problem with Mr. Pearson's attempt to argue that, under other facts, the Opinion might be correct is that the Opinion, as it now reads, is binding precedent. That precedent is wrong in several significant points and should be reversed.

ARGUMENTS

I. THE HOLDING IN FAULKNER V. MILLAR IS NOT CONFINED TO THE SPECIFIC FACTS OF THAT CASE.

Mr. Pearson argues that the rule set forth in Faulkner, disallowing a forfeiture of the buyer's rights where the buyer's nonperformance was caused, in part, by the seller's conduct,

[1] The court of appeals ignored several facts as they actually were, notably, that Mrs. Pearson actually texted to Dr. Anderson that Mrs. Pearson obtained the survey on or about August 17, 2017 well after the contract had been signed, and told Dr. Anderson's broker, Katie Graves, that Mrs. Pearson had the survey and would record it. (R. 237, lines 4-13). (Petition at p. 5). Mrs. Pearson also directly texted to Ms. Graves on September 12, 2017, 17 calendar days before the deadline in the contract, that the survey would be filed the following Monday. (R. 345).

only applies in cases where (1) there is not a "time is of the essence" clause, (2) a written request for an extension is received during the time for performance stated in the contract, (3) the buyer needs more time to complete his obligation under the contract, and (4) the buyer is merely trying to preserve his earnest money deposit. These arguments are entirely incorrect.

In Faulkner, the South Carolina Supreme Court stated that the rule disallowing forfeiture would apply if the contract at issue were an option contract. Faulkner, 319 S.C. at 221, 460 S.E.2d at 381. In Ingram v. Kasey's Assocs., this Court held: "If the option requires performance in a certain manner, time is of the essence…." 340 S.C. 98, 108, 531 S.E.2d 287, 292 (2000). See, Faulkner, 319 S.C. at 220, 460 S.E.2d at 381 ("Accordingly, as the contract was not an option, time was not of the essence."). The Court expressly stated that its holding disallowing a forfeiture would apply if the contract were an option contract (i.e., a "time is of the essence" contract). Mr. Pearson's argument that Faulkner does not apply because the contract in this case had a "time is of the essence" clause is wrong.

Further, if the rule is that a seller may mislead a buyer into missing a closing date as long as the contract contains a "time is of the essence clause," this Court should state that expressly. As noted in the Petition for a Writ of Certiorari, that would be contrary to a significant amount of legal commentary on this point, as well as a truly bad rule.

Mr. Pearson's second argument regarding the necessity of a written request for an extension to be sent within the stated time limits in the contract for Faulkner to apply is also incorrect. In Low Country Open Trust v. Charleston S. Univ., 376 S.C. 399, 656 S.E.2d 775 (Ct. App. 2008), in which the court of appeals applied the holding in Faulkner to prevent a forfeiture of a contract to purchase real property, the request for an extension of the closing date was sent more than a month after the expiration date in the contract. Id. at 405, 656 S.E.2d at 778. In

Low Country, the contract did not have a "time is of the essence" clause, but, as discussed above, the authorities weigh heavily against concluding that cheating someone out of their contract rights is acceptable as long as time is of the essence in the contract.

Mr. Pearson's argument that Faulkner should only apply where the buyer needs more time to complete the buyer's obligations under the contract has no logical underpinning, particularly as applied to the facts of this case. The rule stated in Faulkner focusses on the seller's conduct causing the buyer to believe that the buyer would not use the termination date set forth in the contract against the buyer.

In this case, it was the seller's agent, Mrs. Pearson, who repeatedly stated that she needed more time to provide the survey to Dr. Anderson, and then used Dr. Anderson's trust against her. This is a far more compelling set of facts to disallow the forfeiture of the buyer's contract rights than in Faulkner.

As for Mr. Pearson's attempt to distinguish Faulkner on the ground that the buyer was trying to preserve his earnest money deposit, again, that argument is defeated by reviewing the opinion in Low Country. In that case, as in this one, the buyer was trying to preserve its right to buy real property under a contract, and was allowed to do so, in part because of the rule set forth in Faulkner. Low Country, 376 S.C. at 409, 656 S.E.2d at 780. The rule stated in Faulkner is not limited to cases involving the return of earnest money.

The rule set forth in Faulkner disallowing the forfeiture of a buyer's rights under a contract where the seller contributed to the buyer's missing the closing deadline, even innocently, should have been applied in this case as well. Because it was not, there is now conflicting case law on that issue.

II. THE OPINION CREATES A NOVEL ISSUE REGARDING THE REASONABLENESS OF RELIANCE IN AN EQUITABLE ESTOPPEL CASE.

Mr. Pearson's Return to the Petition for a Writ of Certiorari does not address what the court of appeals actually held – that Dr. Anderson's reliance was unreasonable because the court of appeals just thinks it was, and because Dr. Anderson should have realized that Mrs. Pearson was stalling in giving Dr. Anderson the survey. The court of appeals provides no other reason. The misapplication of law to the reasoning the court of appeals provided in a published opinion needs to be addressed by the Supreme Court. Even if this Court ultimately agrees with Mr. Pearson's factual argument, that would not fix the fact that, as of now, the court of appeals' holding is new and binding precedent that goes beyond the holdings of this Court on the reasonableness requirement in equitable estoppel cases.

Respectfully, as an initial matter, the role of "reasonableness" in reliance in equitable estoppel cases could be clarified. In stating the elements of equitable estoppel, several cases do not mention the word "reasonable" in applying the reliance requirement. See e.g., Rodarte v. Univ. of South Carolina, 419 S.C. 592, 799 S.E.2d 912; Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007).

In Boyd v. Bellsouth Tel. Tel. Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006), this court quoted S. Dev. Land and Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993) for the proposition that "[o]ne with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been misled." Boyd, 369 S.C. at 423, 633 S.E.2d at 142. Rodarte uses similar language, without using the word "reasonable." However, neither of those cases, nor any others, just apply an ad hoc, 20/20 hindsight approach as the court of appeals does here. If that were the rule, the remedy of

equitable estoppel would suffer greatly because equitable estoppel only applies in cases where, in hindsight, the parties seeking relief could have done more to protect themselves.

Where the concept of reasonableness in reliance in an equitable estoppel case has been applied to deny relief, other than in matters of due diligence in discovering specific facts, it has usually been with respect to the lack of authority of the person making the statement, see e.g., Morgan v. South Carolina Budget and Control Board, 377 S.C. 313, 318, 659 S.E.2d 263, 267 (Ct. App. 2008), or in claiming to have relied on the silence of a person in a situation in which they certainly would have spoken. See, Rushing v. McKinney, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006). In the Opinion, the court of appeals did not cite to a case that holds a party's reliance was unreasonable because the court just thought it was.

Further, South Carolina courts do not appear to have come close to holding that one who knowingly deceives another can argue that the hearer should have figured out that the speaker was lying. However, that is essentially what the court of appeals held here. That goes against the entire purpose of equitable estoppel. "In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." Rodarte, 419 S.C. at 601, 799 S.E.2d at 916 (internal citation omitted). The court of appeals' holding in this case as to reasonableness in an equitable estoppel case creates a new and unrealistic standard that should be addressed and rejected by this Court.

III. THE COURT OF APPEALS' HOLDING AS TO DETRIMENTAL RELIANCE IS CLEARLY IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

In the Opinion, the court of appeals found: "Anderson did not present evidence of expenditures or other actions she took in reliance on Pearson's promise." Anderson, 445 S.C. at 465, 914 S.E.2d at 871. The court of appeals' holding that one has to spend money or take

action in reliance on the promise of another to invoke equitable estoppel is clearly incorrect. Player v. Chandler, 299 S.C. 101, 106, 382 S.E.2d 891, 894 (1989), requires a "definite, substantial, detrimental change of position in reliance on [the] agreement and that no remedy except enforcement of the bargain is adequate to restore his former position." Id. (Emphasis added). Neither the court of appeals nor Mr. Pearson has produced a case holding that unless the party claiming estoppel spent money or did something in reliance on the process they cannot have suffered a "definite, substantial, detrimental change of position."

Losing one's right to enforce a contract based upon having relied upon the representation of another is a definite, substantial, change of position sufficient to satisfy the requirements of equitable estoppel.

> Equity will not allow the statute of frauds to be used as an instrument of fraud, and where a party to a contract within the statute induces the other to waive some provision thereof upon which he is entitled to insist and to change his position to his disadvantage with respect thereto, the party so acting will be estopped to claim the benefit of the statute. This principle of law is peculiarly applicable to oral extensions for performance of written contracts, where one party has acted upon the extension and failed to exercise rights as provided by the written contract.

Florence Printing Co. v. Parnell, 178 S.C. 119, 182 S.E. 313 (1935). (internal citations omitted). In Florence Printing, the buyer had the right to purchase from the seller, at par, an amount of stock sufficient to equalize their holdings. That contract was in writing and was subject to the statute of frauds. Id., 182 S.E. at 316. The seller waived the provision of the agreement in regard to time of compliance, then tried to enforce it after it had expired. Id. All that the buyer had lost was the value of the contract he had not enforced in reliance on the seller's statement that he would not enforce the time limit in the contract. He did not "present evidence of any expenditures or other actions [he] took to [his] detriment in reliance on [seller's] promise."

Anderson, 445 S.C. at 465, 914 S.E.2d at 871. Yet, he had detrimentally changed his position sufficiently to assert equitable estoppel.

Florence Printing was the case primarily relied upon by the court of appeals in Collins Music Co., Inc. v. Cook, 281 S.C. 580, 583, 316 S.E.2d 418, 420 (Ct. App. 1984), which the court of appeals relied upon in the Opinion. In Collins Music, the court of appeals held that Collins Music had no detrimental change of position because all he lost was the expected benefit under the alleged oral contract. Id. When Collins Music argued that it had actually lost the ability to sue under another contract, the court of appeals did not reject that argument on the ground that that would be an insufficient change of position. The court of appeals rejected that argument because it was not factual. Id. Collins Music could have still sued under the other contract. Id. The strong implication from the opinion in Collins Music is that had Collins Music allowed its rights under another contract to expire in reliance on the oral contract with the Defendants in the case before the court, that would be sufficient detrimental reliance to assert equitable estoppel.

The Court of Appeals opinion in the case now before the court is completely in conflict with Florence Printing Co. and Collins Music. The court of appeals' error appears to be in forgetting that the signed contract between Mr. Pearson and Dr. Anderson was an enforceable contract. Losing one's rights under an already enforceable contract in reliance on the statements of another, exactly as Dr. Anderson did, is sufficient to satisfy the detrimental reliance element of equitable estoppel.

IV. THE OPINION IS IN DIRECT CONFLICT WITH INGRAM V. KASEY'S ASSOCIATES, 340 S.C. 98, 531 S.E.2d 287 (2000) ON THE NECESSITY TO TENDER PERFORMANCE TO SEEK THE REMEDY OF SPECIFIC PERFORMANCE.

In his Return, Mr. Pearson at least does not try to support the erroneous conclusion that Dr. Anderson did not present any evidence that she had the $100,000.00[2] in cash necessary to close. Dr. Anderson clearly testified that she had those funds and was ready to pay them. (R. 182-83). She testified she had several hundred thousands of dollars in various bank accounts (Id.). Mr. Pearson argues that she testified that she did not have the funds in her checking account – as though, even if that argument was accurate, it would be relevant. She testified that she did not have several hundred thousand in her checking account. (Id.). She did testify that she had it in various banking accounts. (R. 182).

The burden of proof in a case for specific performance is the preponderance of the evidence. Dr. Anderson is a medical doctor who was preparing to close on a rather ordinary contract. The master-in-equity heard her testify, saw her demeanor, and believed her. No one presented evidence to the contrary.

Mr. Pearson argues in his return that she did not present bank depository account statements or tender the funds. (Ret. p. 11). Mr. Pearson did not argue that at trial. Further, there is no requirement that she present bank depository statements to bolster her testimony that she had the money. Ingram certainly does not require that. Testimony under oath is evidence, and neither the court of appeals nor Mr. Pearson offered a reason why the trial court should not have believed her.[3]

Mr. Pearson never argued at trial or in his appellate brief that Dr. Anderson did not have the funds necessary to close. For purposes of this petition, though, Mr. Pearson takes up the mantle of the court of appeals and argues that Dr. Anderson did not "come forward at the time of

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[2] Mr. Pearson correctly points out that the amount Dr. Anderson needed in cash was $97,000.00 because she had already deposited the earnest money.

[3] Of course, the Court of Appeals did not even acknowledge that she had testified that she had the funds to close, even after being directed to the page in the Record where she did.

closing with the $100,000." Anderson, 445 S.C. at 468, 914 S.E.2d at 873. This Court in Ingram made it clear that a party seeking specific performance does not have to tender the funds to satisfy a contract if the party had the funds available. However, the Opinion is now binding legal authority, and is directly in conflict not only with Ingram but with Speed v. Speed, 213 S.C. 401, 412, 49 S.E.2d 588, 593 (1948) ("It is enough that he is ready and willing and offers to perform in his pleading."); Elliot v. Dew, 264 S.C. 40, 46, 212 S.E.2d 421, 423 (1975) ("Equity will not require the doing of a futile task, nor foreclose the rights of a party from obtaining specific performance for failure to do something which in view of all the facts would have been useless."); and Maccaro v. Andrick Development Corp., 280 S.C. 96, 101-02, 311 S.E.2d 91, 94 (Ct. App. 1984) ("Moreover, where the contract has been repudiated by the other party or it is clear tender will be refused, the party seeking specific performance is relieved of the obligation to make tender.").

Further, as noted in the Petition, the contract at issue in this case did not require Dr. Anderson to tender performance until Mr. Pearson prepared and presented a deed to the property being purchased. (R. 323-24). Dr. Anderson plainly testified that she was ready, willing and able to perform on September 29, 2017 (R.169). Somehow, the Court of appeals seemed to have accepted her testimony that she was ready, willing and able to perform the contract that the time of the hearing, but ignored her testimony that she could have performed the contract on the closing date in the contract. (R. 169). She testified that if the loan had not come through she could have closed with other funds. (R. 170).

The opinion in Ingram is divided into two parts: Part I discusses the law of specific performance, which is applicable here. 340 S.C. at 105, 531 S.E.2d at 290. Part II discusses the

law applicable to the exercise of options in lease agreement. Mr. Pearson takes the language in Part II and attempts to apply it to this case. That language is not applicable here.

Also, neither the court of appeals nor the Return discussed Champion v. Whaley, 280 S.C. 116, 311 S.E.2d 404 (Ct. App. 1984). In that case, the South Carolina Court of Appeals held:

> It is sufficient for the plaintiff to present evidence that the defendant's prevention "substantially contributed" to the nonoccurrence of the condition. (Internal citation omitted). Once he has made such proof, the burden shifts to the defendant. If the defendant can show that the condition would not have occurred regardless of the prevention, then the prevention did not contribute materially to its nonoccurrence and the condition is not excused.

Id. at 22, 311 S.E.2d at 407. As noted in Champion, this is the rule set forth in Restatement (Second) of Contracts § 245 (1979), which is heavily dependent on the duty of good faith and fair dealing.

How could the rule be otherwise? The burden has to be on Mr. Pearson to prove that even if his agent had timely provided the survey to Dr. Anderson, she could still not have obtained her funding and closed on time.

The court of appeals has essentially held that if a party can trick someone out of performing their obligation under a contract on a timely basis, that is to be applauded. Heretofore, that has not been the rule in this State, nor should it be.

V. THIS COURT SHOULD DECIDE THAT DR. ANDERSON PARTLY PERFORMED THE CONTRACT.

Dr. Anderson's argument that she should prevail on the basis of part performance of the contract is based upon Rule 220(c), SCACR. All of the facts supporting that argument were presented to the trial court and are discussed in the Opinion.

Dr. Anderson raised this point based upon the sheer brazenness of Mrs. Pearson's actions as even found by the court of appeals. Mrs. Pearson persuaded Dr. Anderson to give up a portion of the property she was buying for a right-of-way, and actually had a survey conducted to reflect such right-of-way. Mrs. Pearson then withheld the survey with the intent of causing the contract to expire so that Mr. Pearson would then have the right-of-way problem resolved for when they sold the nine-acre lot that the right of way served – which they later did and asked Dr. Anderson to amend the lis pendens so as not to include the right-of-way.

Mr. Pearson's argument that there was not clear evidence of an oral contract is completely without merit. Dr. Anderson's plain agreement to reduce the acreage she would purchase in consideration of Mrs. Pearson's agreement to provide the survey to Dr. Anderson is reflected in the survey that Mrs. Pearson actually prepared before the stated deadline in the contract. (R. 372). Dr. Anderson clearly partly performed the oral contract to provide by signing the Transaction Brokerage Agreement (R. 335), which was enforceable against her to agree to reduce the acreage she would receive.[4] Mrs. Pearson clearly partly performed the contract by having the survey performed reflecting the right-of-way. As discussed above, her actions in this case certainly showed Dr. Anderson's willingness to complete the contract. As such, Dr. Anderson satisfied the elements of Fesmire v. Digh, 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009).

VI. MR. PEARSON'S RETURN DOES NOT ACKNOWLEDGE THE FACT THAT MRS. PEARSON STATED THAT SHE WOULD PROVIDE THE SURVEY TO DR. ANDERSON AFTER THE WRITTEN CONTRACT HAD BEEN ENTERED INTO.

[4] Mr. Pearson has continually argued that the survey did not result in a reduction of the acreage that Dr. Anderson would have received. (Ret., p. 4). It certainly did. The approximately 21.99 acre lot was reduced to 21.00. (R. 373). The right-of-way was sold to another buyer with the 9-acre lot. That is why the Lis Pendens was amended. (R 373). See also, Deed Book 138-V, Page 25; Plat Book 176, Page 827. Spartanburg County Register of Deeds.

It is apparently a "given" that if Dr. Anderson could prove equitable estoppel or part performance, then the parol evidence rule, the merger clause and the non-reliance clause would not apply because (1) it is clear that contracts can be modified after they have been entered into, and (2) because it is also clear that equitable estoppel and part performance remove the requirement of the Statute of Frauds that any such modification be in writing signed by the party sought to be charged.

In discussing the parol evidence rule, the merger clause and the non-reliance clause, neither the Opinion nor Mr. Pearson's Return discuss the fact that Mrs. Pearson stated that she would provide the survey to Dr. Anderson <u>after the written contract had been entered into</u>, which means the parol evidence rule, the merger clause and the non-reliance clause have no application here. Those rules do not reach into the future to negate subsequent events after a contract has been signed.

Dr. Anderson's position in this case has always been based only upon the fact that Mrs. Pearson's statement that she would provide the survey continued after the contract had been signed and caused Dr. Anderson not to perform her duty under the contract on a timely basis.

CONCLUSION

What makes this case especially unfortunate is that Dr. Anderson, a young physician in Spartanburg, was simply trying to be nice to the elderly couple who had already agreed to sell Mr. Pearson's property to her. Dr. Anderson did not benefit from agreeing to allow Mr. Pearson to have a right-of-way on the property according to a survey the Pearsons were preparing. Dr. Anderson could have told Mrs. Pearson when the survey did not arrive immediately that there would be no right-of-way and that Dr. Anderson would get her own survey and close on the

contract as written. While this would have made the neighboring nine-acre lot difficult to sell, that would have been the Pearson's problem.

But people who honor the concept of good faith and fair dealing do not that. They do not casually treat their elders disrespectfully. They do not casually assume that the elderly lady was "stalling," as the court of appeals put it. The duty of good faith and fair dealing allows parties to a contract to assume that the other party is acting in good faith. Instead, the court of appeals has placed its imprimatur on the saying "No good deed goes unpunished."

That being said, Dr. Anderson understands that, by itself, an erroneously-decided contract dispute between two individuals may not warrant the South Carolina Supreme Court's granting a petition for a writ of certiorari. However, a published opinion that contradicts long-established rules of equity does. Courts in South Carolina are regularly called upon to decide equitable estoppel and specific performance cases. As a result of the court of appeals' opinion in this case, trial courts and litigants will have to deal with authority that contradicts rules previously established by this Court. Therefore, regardless of what this Court ultimately decides, Dr. Anderson prays at least that the erroneous statements of the equitable principles and rules set forth in the court of appeals' Opinion be addressed and corrected.

Wherefore, Petitioner prays that the writ of certiorari be granted.

Respectfully submitted,

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