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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BERKELEY COUNTY
COURT OF COMMON PLEAS

The Honorable Jennifer McCoy, Circuit Court Judge

Appellate Case No. 2024-002032

Case No.: 2021-CP-08-00087

Tunc Eren Respondent,

v.

AKPA Chemicals US, Inc. Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENT

1. RESPONDENT CANNOT TAKE A POSITION INCONSISTENT WITH OR CONTRADICTIONARY TO HIS PLEADINGS.

In Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992), quoting Elrod v. All, 243 S.C. 425, 134 S.E.2d 410 (1964), this Court explained the following,

“It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.”

Paragraph 12(c), p. 2, of Appellant’s Complaint states the following,

“In order to aid Defendant in his role as General Manager, Plaintiff provided him with resources and corporate benefits, including, but not limited to: (c) Rent payments on a monthly basis for Defendant’s apartment (hereinafter the “Rent Payments”). A copy of the lease agreement has been attached hereto as Exhibit 3.”

Paragraph 12, p. 1, of Respondent’s Answer states the following, “Defendant admits the allegations contained in paragraph 12-C.”

At no point, did Respondent withdraw, alter, strike, or amend his Answer. At no point did Respondent ask leave from the trial court to amend his Answer. Likewise, Claimant did not take any other affirmative action to change his Answer in anyway. Therefore, under the well settled case law contained in both Postal and Elrod, Respondent’s “pleadings and the facts which are admitted by [Respondent’s] pleadings are taken as true against [Respondent] for the purpose of the action.” Id.

At trial, and in his Initial Brief, Respondent has put forth allegations that are inconsistent and contradictory to Paragraph 12(c) of Appellant's Complaint, which Respondent admitted in his Answer. Specifically, in his Initial Brief, Section II, p. 4, Respondent stated, "The security deposit was part of a personal lease not involving AKPA. Furthermore, Appellant submitted a purported lease that lacked signatures and legal effect, which undermined their claim."

Respondent's statements are inconsistent and contradictory to the admission contained within his Answer. The Lease referred to in Paragraph 12(c) of Appellant's Complaint, was attached to the Complaint as Exhibit 3, and later admitted at trial as Respondent's Exhibit 1. See Transcript p. 37. Therefore, when Respondent takes the position in his Initial Brief that "Appellant submitted a purported lease that lacked signatures and legal effect," he is taking a position that is contradictory and inconsistent with the admission contained in his Answer. See Section II, p. 4 of Respondent's Initial Brief. Moreover, the Lease admitted by Respondent's Answer and admitted as Appellant's Exhibit 1 at trial, contains Appellant's name (AKPA Chemicals US, Inc.) on the first page of the Lease. See Appellant's Trial Exhibit 1. Therefore, Respondent is precluded from now taking the position that "[t]he security deposit was part of a personal lease not involving AKPA."

Respondent's admission, contained in Paragraph 12, p. 1 of his Answer, is an admission that the factual allegations contained within Paragraph 12(c), p. 2, of Appellant's Complaint are true, accurate and correct. Therefore, as it relates to the Respondent's lease, there is only one lease that should have been admitted at trial, and only one lease the trial court should have considered. Nonetheless, over Appellant's objections, see Transcript p. 106, lines 6-9, the trial court allowed Respondent to admit a second lease, which is materially different from the lease introduced as Appellant's Exhibit 1. See Transcript pp. 106-107.

CONCLUSION

For all of the foregoing reasons, the Circuit Court's decision should be reversed as stated herein.

July 11, 2025

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PROOF OF SERVICE

I certify that I have served the *Reply Brief of Appellant* by forwarding via electronic mail and electronic filing and/or U.S. mail on July 11, 2025, addressed to the Respondent, Tunc Eren, to the South Carolina Court of Appeals, and to the Berkeley County Court of Common Pleas at the following:

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