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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
Case No. 2018-CP-42-03579

J. Mark Hayes, II, Circuit Court Judge

APPELLATE CASE NO.: 2025-000020

Charna Henson, as Trustee of the Lewis C. Mason Revocable Trust
Dated September 6, 2001, as Amended and Restated June 19, 2008,
d/b/a L.C. Mason Enterprises……………………………………………..…………..Appellant,

v.

Nabil E. Saleh, Amanda Shadon Miller and Sparkle City Motors…………………Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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I. Based upon the failure of Respondents to properly oppose Appellant's request for an increase in the damages award, Appellant is entitled to an order increasing the damages award to $757,701.33.

Respondent Miller argues that this appellate court should limit the damages awarded to Appellant to $358,465.98. Respondent Miller does not, however, provide any factual or legal support for her conclusory argument. As such, this court should disregard Miller's argument in its entirety. See Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019)("When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue."); Solomon v. City Realty Co., 262 S.C. 198, 203 S.E.2d 435 (1974)(conclusory argument is deemed abandoned).

Similarly, Respondents Nabil E. Saleh and Sparkle City Motors affirmatively elected not to file or serve a brief in opposition to the Brief of Appellant despite Rule 208(a)(2), SCACR, which provides that a Respondent "shall" serve a Brief of Respondent. Respondents Saleh and Sparkle City Motors have waived any arguments that may have had to Appellant's request for a damages award in the amount of $757,701.33. See Rule 208(a)(4), SCACR. See e.g., Campbell v. Carr, 361 S.C. 258, 266-67, 603 S.E.2d 625, __ (Ct. App. 2004)(Goolsby, J., concurring)(appellate "court should not be inclined to do what [respondent] neglected to do, i.e., 'search the record for reasons to affirm.' "); Wierszewski v. Tokarick, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992)(when the respondent does not file a brief, the appellate court may "deem it proper to reverse on the points presented rather than to search the record for reasons to affirm.").

Based upon the foregoing, Appellant requests an order of this Court increasing the damages award to $757,701.33 as set forth more fully in the Brief of Appellant.

II. Because Respondent Miller was either the sole owner of, or a partner in, Respondent Sparkle City Motors who signed a personal guaranty and other agreements supported by valuable consideration which obligated her to pay the debts of Sparkle City Motors, the trial court erred in not holding Miller jointly and severally liable for the debts owed to Appellant by Respondents.

The trial court declined to extend liability for Appellant's damages to Respondent Miller for "numerous reasons." (ROA p.___, Final Order, p. 7). The trial court's "reasons" are either controlled by errors of law or are without evidence which reasonably supports the judge's findings. Miller is just as responsible for Appellant's damages as Saleh is. The trial court erred in refusing to impose judgment against Miller in the same amount as the judgment against Saleh. [1] Miller's arguments to the contrary are not supported by the law or the record in this case.

Miller argues that "no new consideration existed for the 2016 documents Miller allegedly signed as they were identical to the floor plan documents signed by Respondent Saleh in July 2015." (Brief of Respondent p. iv). This argument is not supported by the record and highlights Miller's, and the trial court's, misapplication of the law of consideration in the context of a personal guaranty.

First of all, there are glaring differences between the document signed on July 7, 2015 and the documents signed on March 10, 2016. Saleh was the only party who signed the Promissory Note on July 7, 2015. (ROA p. __, Plaintiff's Ex. 14). No additional documents were signed on July 7, 2015.

Contrarily, on March 10, 2016, numerous documents were signed wherein Miller expressly obligated herself to pay the debts owed to Appellant. On March 10, 2016, Miller solely signed the floor plan agreement. (ROA p. __, Plaintiff's Ex. 23). Then, she signed a "Personal Guarantee"

[1] As referenced in Brief of Appellant and Argument I supra, Appellant contends the actual damages award should be $757,701.33.

(ROA p. __, Plaintiff's Ex. 16), Security Agreement (ROA p. __, Plaintiff's Ex. 17), and powers of attorney (ROA p. __, Plaintiff's Exs. 20, 22). Contrary to the assertion by Miller, the 2016 floor plan documents were far from identical to the one document signed in 2015.

Miller also argues that there is "no evidence in the record of any amount of new consideration lent or paid by Appellant after the July 2015 Promissory Note was entered by Respondent Saleh." (Brief of Respondent p. iv). This argument ignores the voluminous record in this case. Appellant loaned millions of thousands of dollars to Respondents subsequent to July 2015 as well as subsequent to March 2016. (ROA p. __, Plaintiff's Ex, 26, Defendant's Exs. 3-234, 242-256).

The trial court heard hours of testimony and admitted hundreds of exhibits confirming these transactions. To argue that "Appellant cites no evidence in the record of any amount of new consideration" misrepresents Appellant's brief and the Record on Appeal. See Brief of Appellant p. 10 ("Subsequent to March 10, 2016, Appellant continued to loan Respondents money pursuant to the floor plan arrangement. (ROA p. __, Plaintiff's Ex. 26, Defendants' Exs. 3-234, 242-256"). See also Brief of Appellant p. 23 ("The relationship between Appellant and Sparkle City Motors was not stagnant during the intervening eight months between July 2015 and March 2016 or during the succeeding months before the relationship ended in late 2018. Hundreds of transactions took place involving hundreds of thousands [2]of dollars. Vehicles were bought, floor planned, and sold on almost a weekly basis. (ROA p.__, Plaintiff's Ex.26; Defendants' Exs. 3-234, 242-256)").

To eliminate all possibility of confusion, the following are just a few examples[3] of loans

[2] As referenced more fully infra, upon closer inspection, the actual amount was in the millions of dollars.

[3] The Record on Appeal only includes documents related to loans made by Appellant which were not repaid in full by Respondents. There were numerous other loans made by Appellant subsequent to March 10, 2016 -especially between March 10, 2016 and the summer of 2017- which were not discussed at trial because they were not relevant

made by Appellant for the benefit of Respondents subsequent to March 10, 2016:

$26,935.00 loan on July 10, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36076)

$81,445.00 loan on September 28, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36479)

$44,570.00 loan on October 3, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36507)

$7,500.00 loan on October 27, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36634)

$74,740.00 loan on October 25, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36618)

$58,155.00 loan on November 14, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36712)

$48,235.00 loan on November 21, 2017 (ROA p. __, Plaintiff's Ex. 26- check 36757)

$19,990.00 loan on December 5, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36822)

$28,820.00 loan on December 12, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36863)

$110,465.00 loan on December 15, 2017 (ROA p. __, Plaintiff's Ex. 26- check #36885)

$42,825.00 loan on January 4, 2018 (ROA p. __, Plaintiff's Ex. 26- check #36994)

$85,000.00 loan on January 5, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37006)

$64,390.00 loan on January 19, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37086)

$19,570.00 loan on March 1, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37311)

$36,645.00 loan on March 12, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37367)

$18,000.00 loan on March 16, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37396)

$34,000.00 loan on March 23, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37438)

$26, 455.00 loan on April 2, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37478)

$45,000.00 loan on April 10, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37509)

$66,675.00 loan on May 10, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37682)

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to the Appellant's claim for damages. The timeframe of the given examples of loans not repaid in full is consistent with Appellant's testimony that the mutually beneficial relationship of the parties started to change in "mid-2017." (ROA p. __, Tr. p. 45, l.22 – p. 46, l. 4).

$83,025.00 loan on May 15, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37695)

$40,820.00 loan on May 15, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37696)

$50,325.00 loan on May 17, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37722)

$68,970.00 loan on May 25, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37754)

$59,325.00 loan on June 5, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37789)

$19,910.00 loan on June 11, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37820)

$19,195.00 loan on June 20, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37858)

$26,990.00 loan on June 29, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37912)

$58,345.00 loan on July 9, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37919)

$43,095.00 loan on July 11, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37942)

$101,210.00 loan on July 12, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37948)

$31,790.00 loan on July 13, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37950)

$32,780.00 loan on July 17, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37963)

$9,995.00 loan on July 19, 2018 (ROA p. __, Plaintiff's Ex. 26- check #37978)

$85,545.00 loan on July 27, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38014)

$59,615.00 loan on August 2, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38044)

$62,065.00 loan on August 3, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38051)

$3,250.00 loan on August 20, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38117)

$29,990.00 loan on August 24, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38146)

$81,900.00 loan on August 30, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38178)

$34,550.00 loan on September 4, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38196)

$21,845.00 loan on September 4, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38193)

$54,655.00 loan on September 6, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38215)

$35,550.00 loan on September 13, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38241)

$14,875.00 loan on September 13, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38242)

$35,165.00 loan on September 17, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38265)

$10,850.00 loan on September 18, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38269)

$18,870.00 loan on September 28, 2018 (ROA p. __, Plaintiff's Ex. 26- check #38326)

As shown by the above examples, Appellant provided more than **$2,000.000.00** in new consideration ***after*** Miller signed her "Personal Guarantee" on March 10, 2016.

Miller argues that Appellant's reliance on Branch Banking & Trust Co. of S.C. v. Carolina Crank & Core, Inc., 262 S.C. 647, 608 S.E.2d 896 (Ct. App. 2005) is misplaced. In so arguing, Miller continues to ignore the actual record in this case. Carolina Crank stands for the proposition that "if a note and guaranty are executed simultaneously, the consideration of the note functions as consideration for the guaranty." Id. at 653, 608 S.E.2d at ___. When arguing that this proposition does not apply in the present case, Miller states that "the Note was entered by Saleh in July 2015 for which Miller allegedly signed a Personal Guaranty in March 2016." Brief of Respondent p. vii. Miller ignores the fact that the "Personal Guarantee" was not the only document signed on March 10, 2016. Miller also signed the floor plan agreement on behalf of Sparkle City Motors (ROA p. __, Plaintiff's Ex. 23), along with the Security Agreement (ROA p. __, Plaintiff's Ex. 17), and powers of attorney (ROA p. __, Plaintiff's Exs. 20, 22). Read together, these documents were tantamount to a note. A note is an "instrument that evidences a promise to pay a monetary obligation …" S.C. Code Ann. 36-9-102(a)(65). There can be little doubt that Sparkle City Motors promised to pay Appellant by virtue of the floor plan agreement admitted into evidence as Plaintiff's Exhibit 23, which was signed contemporaneously with the Miller's personal guaranty.

Even if the documents signed on March 10, 2016 do not trigger the "presumption of consideration" referenced in Carolina Crank, the millions of dollars Appellant loaned to Respondents ***after*** March 10, 2016 serve as valid consideration for Miller's personal guaranty. See Lampo v. Amedisys Holding, LLC, 445 S.C. 305, 323, 914 S.E.2d 139, __ (2025)(Verdin, J., dissenting)(confirming that "while past consideration will not form a valid contract, a contract may have more than one form of consideration, and ***any*** new consideration will make that contract enforceable.")(emphasis added).

The trial court also based its finding that "no new consideration existed" to support Miller's personal guaranty on the notion that "it appears clear that Miller brought no monetary consideration or value to the business." (ROA p. __, Final Order p. 7). This finding is wholly irrelevant to the analysis. Sufficient legal consideration for a guaranty is merely "a benefit to the principal obligor ***or*** guarantor on the one hand, ***or*** some detriment to the obligee on the other hand." Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 17, 425 S.E.2d 786 (Ct. App. 1992) (emphasis added). In the present case, while only one prong need be satisfied, all three were satisfied. The principal obligor received a benefit, the guarantor received a benefit, and the obligee suffered a detriment.

The finding of the trial court that "no new consideration existed" is controlled by an error of law and is also without evidence which reasonably supports such a finding and must be reversed. See Townes Assoc., LTD. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, __ (1976)(on appeal from a case tried by a judge in an action at law, the appellate court may correct errors of law as well as findings of the judge which are "found to be without evidence which reasonably supports the judge's findings.").

To the extent relevant, the record overwhelmingly supports the conclusion that Appellant was not going to continue loaning money under the existing floor plan arrangement if Miller didn't guarantee the loans. Appellant wasn't going to continue the business relationship with Sparkle City Motors if Miller didn't sign the new line of credit, "Personal Guarantee", Security Agreement, Repossession Agreement, Power of Attorney and related documents on March 10, 2016. (ROA p. ____, Plaintiff's Exhibits 16, 17, 20, 22, 23). Appellant testified that she asked Miller to sign these documents because Miller "was part owner of the business. Her name was on the bond and on the insurance and on the dealer's license." (ROA p. ___; Tr. p. 32, ll. 15-21). The fact that Miller's name was on the surety bond indicated Saleh was "having credit problems." (ROA p. ___, Tr. p.32 ll. 22-p. 33 l. 11). Appellant needed Miller to sign all of these documents "just to offer the credit line to that dealership." (ROA p. ___, Tr. p. 34 ll. 20-24). Appellant needed some additional security to justify continuing the floor plan arrangement.

Perhaps more importantly for purposes of this Reply, the trial court found that "Miller was added to the business so Saleh could continue his business." (ROA p. ___, Final Order p. 3. See also Final Order p. 7 ("Miller's name was used in order that Saleh could continue his wholesale business.")). This finding by the trial court highlights Miller's substantial and meaningful value to the business. Without Miller's involvement, the business relationship between Appellant and Sparkle City Motors would have ceased entirely. Appellant would not have continued to loan Sparkle City Motors any more money and Respondents would not have continued to earn a profit on almost every car sold and deposited and invested hundreds of thousands of dollars during the relevant time period.

Miller's arguments related to piercing the corporate veil lack merit. Sparkle City Motors was not a corporate entity. During the time period relevant to this appeal, Sparkle City Motors was either owned solely by Miller or it was a partnership between Miller and Saleh. (ROA p. __, Tr. p. 32, ll.15-21, p. 575, l. 9- p. 576, l.7; Plaintiff's Exs. 33, 36, 38, 39-41). The trial court found that Saleh "brought Defendant Miller into the business" in 2016. (ROA p.__, Final Order p. 3). Respondents did not appeal from this finding and it is the law of the case. The debts of a partnership are the debts of the partners. See Mansour v. Massey, 286 S.C. 176, 336 S.E.2d 15 (1985). See also S.C. Code Ann. §33-41-370(2).

Even if Miller is not liable for the debts of Sparkle City Motors as a sole proprietor or partner, she still remains liable pursuant to her personal guaranty as argued more fully supra and in the Brief of Appellant.

The trial court erred as a matter of law in concluding that "no new consideration existed" to support the personal guaranty signed by Miller. Appellant continued to do business with all three Respondents because of Miller's personal guaranty and continued to advance funds to floorplan millions of dollars in vehicles subsequent to the execution of Miller's personal guaranty. This arrangement provided a benefit to the principal obligor Saleh/Sparkle City Motors as well as Miller and a detriment to the creditor Appellant. Crafton v. Brown, 346 S.C. 347, 354, 550 S.E.2d 904, 907 (Ct. App. 2001).

The personal guaranty signed by Miller was supported by sufficient legal consideration. As a partner in Sparkle City Motors who signed an enforceable personal guaranty, Miller is liable to answer for the failure of Sparkle City Motors and Saleh to pay and perform pursuant to the underlying debt. The record doesn't reasonably support the trial court's findings to the contrary.

Accordingly, the trial erred as a matter of law in not ordering Miller jointly and severally liable with Saleh for the entire amount of Appellant's damages in the amount of $757,701.33.

III. The trial court's finding and conclusion that Appellant "engaged in Unfair Trade Practices Act violations" must be reversed because the Respondents did not brief this issue at all or otherwise object to Appellant's argument for reversal of this finding and conclusion.

As argued more fully in her Brief of Appellant, Appellant did not engage in any unfair or deceptive acts which affected the public interest and caused Respondent Saleh actionable damages. Respondent Saleh did not file and serve a brief with this Court opposing Appellant's arguments in this regard. Respondent Miller did not address the unfair trade practices argument at all in her brief. The finding and conclusion that Appellant "engaged in Unfair Trade Practices Act violations" must be reversed. (ROA p. ___, Final Order p. 8). See Rule 208(a)(4), SCACR. See also Ellie, Inc. v. Miccichi, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) ("Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal."); Palmer v. State, 427 S.C.36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019)("When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue."); Campbell v. Carr, 361 S.C. 258, 266-67, 603 S.E.2d 625, __ (Ct. App. 2004)(Goolsby, J., concurring)(appellate "court should not be inclined to do what [respondent] neglected to do, i.e., 'search the record for reasons to affirm.' "); Wierszewski v. Tokarick, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992)(when the respondent does not file a brief, the appellate court may "deem it proper to reverse on the points presented rather than to search the record for reasons to affirm.").

CONCLUSION

Based upon the foregoing, this Court should reverse the judgment of the circuit court and award damages in favor of Appellant Charna Henson, as Trustee of the Lewis C. Mason Revocable Trust Dated September 6, 2001, as Amended and Restated June 19, 2008, d/b/a L.C. Mason Enterprises against all Respondents, jointly and severally, in the amount of $757,701.33. In the alternative, once judgment is imposed against Respondent Miller, this Court should remand this case to the circuit court to determine the proper amount of attorney's fees and costs. Additionally, this Court should reverse the circuit court's finding that Appellant "engaged in Unfair Trade Practices Act violations."

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