

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-001064

Patrick Bowie,

Respondent,

v.

Woodbine Estates, LLC

Appellant.

BRIEF ON APPEAL

Fletcher N. Smith, Jr.
P.O. Box 10496
Greenville, S.C. 29603
864-232-6541
Attorney for Appellant

RECEIVED

NOV 12 2013

SC Court of Appeals

INDEX

TABLE OF AUTHORITIES.....	ii
QUESTION PRESENTED.....	iii
STATEMENT OF THE CASE.....	1
1. PROCEDURAL HISTORY.....	1
2. EVIDENCE PRESENTED AT TRIAL.....	2
ARGUMENT.....	5
 UNDER SOUTH CAROLINA LAW WHERE PRINCIPAL AND AGENT OR MASTER AND SERVANT ARE SUED TOGETHER FOR THE SAME ACTS OF NEGLIGENCE OR WILLFUL TORT AND THE PRINCIPALS OR MASTERS LIABILITY RESTS SOLELY UPON SUCH AGENTS CONDUCT OR SERVANTS CONDUCT, CAN A VERDICT STAND AGAINST THE PRINCIPAL OR MASTER ALONE WHERE THE AGENT OR SERVANT HAS BEEN HELD TO BE BLAMELESS BY THE COURT ON DIRECTED VERDICT.	
CONCLUSION.....	7

QUESTON PRESENTED

WHEHTER UNDER SOUTH CAROLINA LAW WHERE PRINCIPAL AND AGENT OR MASTER AND SERVANT ARE SUED TOGETHER FOR THE SAME ACTS OF NEGLIGENCE OR WILLFUL TORT AND THE PRINCIPALS OR MASTERS LIABILITY RESTS SOLELY UPON SUCH AGENTS CONDUCT OR SERVANTS CONDUCT, CAN A VERDICT STAND AGAINST THE PRINCIPAL OR MASTER ALONE WHERE THE AGENT OR SERVANT HAS BEEN HELD TO BE BLAMELESS BY THE COURT ON DIRECTED VERDICT.

TABLE OF AUTHORITIES

<u>Chapman-Storm Lumber Corp. v. Minnesota-South Carolina Land and Timber Co. Et</u>	
<u>Al. 183 S.C. 31, 190 S.E. 117 (1937).....</u>	6
<u>Cherry v. Singer Sewing Machine Co., 165 S.C. 451.....</u>	7
<u>Greer v. State Highway Department, 160 S.C. 510, 159 S.E. 35;</u>	
<u>.....</u>	7
<u>Hainer v. American Medical International, Inc. 320 S.C. 316, 465 S.E.2d 112 (Ct. App.</u>	
<u>1995), affirmed in result, 328 S.C. 128, 492 S.E.2d 103 (1997).....</u>	5
<u>Johnson v. A. C. L. R. R. Co. et al., 142 S.C. 125, 140 S.E. 443.....</u>	6
<u>Jones v. Southern Ry. Co., 106 S.C. 20, 90 S.E. 183.....</u>	6
<u>Moseley v. Oswald 376 S.C. 251, 656 S.E. 2d 380 (2008).....</u>	6
<u>Sparks v. A. C. L. R. R. Co., 104 S.C. 266, 88 S.E. 739.....</u>	6

STATEMENT OF THE CASE

1. Procedural history

The Appellant, Woodbine Estates and Bobby Crosby, Woodbine's agent, servant and/or employee were sued jointly in an amended Complaint of the Appellee Patrick Bowie. In his Amended Complaint, Patrick Bowie alleged that Woodbine Estates LLC and Bobby Crosby converted personal property owned by Patrick Bowie to its own personal use. Bobby Crosby was the principal shareholder of Woodbine Estates L.L.C. R. pg 5 & pg. 87..____

The Woodbine Estates, LLC and Bobby Crosby entered a general denial in their answer and proceeded to trial. R. pg. 25.

At the close of the Plaintiff Patrick Bowie's case counsel for both Woodbine Estates LLC and Bobby Crosby moved for a directed verdict. R. pg. 71. (See also pg.

The trial judge granted the directed verdict for Bobby Crosby but denied it for Woodbine Estates LLC. R. pgs. 78-79.

At the conclusion of all the testimony and evidence and before instructing the jury, defendant Woodbine Estates LLC counsel again moved for a directed verdict. This motion at the conclusion of all the testimony was denied by the trial judge. R. 178

The jury returned a verdict of \$15,000.00 against Woodbine Estates LLC and counsel for Woodbine Estates LLC moved for judgment notwithstanding the verdict. The court denied that motion and Woodbine appeals. R. pg. 22.

2. EVIDENCE AT TRIAL

Woodbine Estates LLC purchased a real estate home and lodge at an auction when the taxpayer Ray Bowie failed to timely pay his taxes. R pgs. 87,88,89.

Without Woodbine's knowledge, sometime in 2008 or 2009 Ray Bowie allowed his cousin Patrick Bowie the appellee to store certain items of personal property at 101 Mill Street, Abbeville, South Carolina. R. pgs. 30-45.

The property was condemned by the City of Abbeville and was deemed unfit for human habitation. R. 88.

The county in compliance with state law sent notices of delinquent taxes to Ray Bowie informing him that he needed to pay his property taxes on 101 Mill Street. R. 87, 88, 89. Ray Bowie ignored the tax notices and failed to pay his taxes whereupon the county tax agent forwarded correspondence to Ray Bowie informing him that the property would be sold at a tax sale. R pgs. 87-88. Ray Bowie did not respond to those tax notices in the mail and the property was posted for delinquent taxes by the tax collector. R. pgs. 87-89.

Ray Bowie then for over a year failed to pay or redeem his property by payment of the taxes. The property was then sold at a tax sale auction wherein Woodbine Estates LLC was the high bidder and purchased the property. R pgs. 87-89. However before a deed was issued to Woodbine Estates LLC transferring title the prior owner Ray Bowie still had a year in order to redeem the property. R. pgs. 88,98. During the period of time wherein Ray Bowie had the opportunity to redeem the property his cousin Patrick Bowie the appellee in this case still stored his personal items on the property that had previously been condemned by the city. R. pgs. 88,

After a year the property was not redeemed and a deed of title was issued to Woodbine Estates LLC transferring ownership to Woodbine Estates LLC.R. pg. 88

After the transfer of the property by deed to Woodbine Estates, Woodbine Estates changed the locks on the house at 101 Mill Street so as to prevent access to the plaintiff or any other members of the public from entering the property that had been condemned and was a liability problem. R. pgs. 88,89.

According to the testimony at trial Patrick Bowie had mutual friends who contacted the defendant to allow plaintiff to pick up certain items of personal property and defendant refused to do so. R pgs. 29-30.

Plaintiff also personally called defendant and requested defendant to allow him to retrieve his personal property which defendant refused. R pgs. 90.

In June or July 2010 Woodbine Estates discarded several items of the appellee's personal property out into the street without notifying the appellee that he could retrieve his items. R. pg. 98. The appellee did procure some of his items but alleges that he did not procure all of them. R. pg. 97.

The testimony shows that the removal of the personal property from Woodbine Estates LLC's property at 101 Mill Street was at the direction of Bobby Crosby who decided upon a course of procedure which resulted in the alleged loss or damage to Bowie's personal property. R. pgs. 97..

Testimony was elicited that Bobby Crosby changed the locks on the property once a deed of title was issued to him transferring title from Raymond Bowie, cousin of Appellee Patrick Bowie from Raymond Bowie's failure to redeem the property during the statutory period of redemption. R. pgs. 88, 98.

The Appellee did not sue any other persons who participated in the removal of the personal property from the condemned residence. R. pg. 5.

The appellant testified that he did not know whose property it was and anybody could have claimed what was inside the building but it appeared to him that the items had been either abandoned or transferred to Woodbine Estates because of the defendant's failure to pick them up in a timely manner before the items had been transferred to him as a result of the purchase of the property and the transfer of the property to him and/or Woodbine Estates by deed. R. pg. 86.

The appellant is the owner or agent of Woodbine Estates LLC and after a period of time during the trial the jury returned a verdict of \$15,000.00 against the appellant and appellant appeals. R. pgs. 20-22.

ARGUMENT I

UNDER SOUTH CAROLINA LAW WHERE PRINCIPAL AND AGENT OR MASTER AND SERVANT ARE SUED TOGETHER FOR THE SAME ACTS OF NEGLIGENCE OR WILLFUL TORT AND THE PRINCIPALS OR MASTERS LIABILITY RESTS SOLELY UPON SUCH AGENTS CONDUCT OR SERVANTS CONDUCT, CAN A VERDICT STAND AGAINST THE PRINCIPAL OR MASTER ALONE WHERE THE AGENT OR SERVANT HAS BEEN HELD TO BE BLAMELESS BY THE COURT ON DIRECTED VERDICT.

In ruling on the denial of motions for directed verdict and Judgment Notwithstanding the verdict, the evidence and all reasonable inferences from the evidence must be considered in the light most favorable to the non-moving party...If the evidence as a whole is susceptible of more than one reasonable inference a jury issue is created and the motions for directed verdict and JNOV are properly denied. However, if only one reasonable inference can be drawn from the evidence, the motion must be granted. **Hainer v. American Medical International, Inc. 320 S.C. 316, 465 S.E.2d 112 (Ct. App. 1995), affirmed in result, 328 S.C. 128, 492 S.E.2d 103 (1997).**

A trial court commits reversible error if it fails to grant a directed verdict and or Judgment Notwithstanding the verdict where the a Plaintiff has not established in a joint suit against a principal and agent and/or master or servant that the agent has committed a negligent act or engaged in intentional act that results in injury to the plaintiff.

Plaintiff did not establish that the agent of Woodbine Estates LLC committed the intentional tort of conversion where the trial court judge rules on directed verdict to dismiss the conversion claim against the agent.

Conversion is a cause of action that arises (1) when a person has an interest in the thing being converted; (2) the defendant converted the property to his own use and (3) the use was without Plaintiff's permission. **Chapman-Storm Lumber Corp. v. Minnesota-South Carolina Land and Timber Co. Et Al.** 183 S.C. 31, 190 S.E. 117 (1937). But See **Moseley v. Oswald** 376 S.C. 251, 656 S.E. 2d 380 (2008) (summary judgment not appropriate where a genuine issue exist as to exercise unauthorized control over a plaintiff's personal property).

In this present action Woodbine Estates LLC and Bobby Crosby were sued jointly by the plaintiff Patrick Bowie R.____.

The trial judge directed a verdict in favor of the defendant agent Bobby Crosby who was an agent of Woodbine Estates LLC. R.____

Consequently, the directed verdict and/or judgment NOV should have been granted in favor of appellant Woodbine Estates LLC. R.____

The trial judge's failure to grant a directed verdict or judgment notwithstanding the verdict is error that should be reserved.

It has long been settled that, where principal and agent or master and servant are sued together for the same act of negligence or willful tort, and the principal's or master's liability rests solely upon such agent's or servant's conduct, a verdict against the master alone is illogical, and cannot stand. The reason for the rule is perfectly apparent, for, if the agent or servant is without blame in his conduct, the principal or master cannot be held blamable because of that same conduct. **Chapman-Storm Lumber Corp. v. Minnesota-South Carolina Land and Timber Co. Et Al.** 183 S.C. 31, 190 S.E. 117 (1937) *Johnson v. A. C. L. R. R. Co. et al.*, 142 S.C. 125, 140 S.E. 443; *Jones v. Southern Ry. Co.*, 106 S.C. 20, 90 S.E. 183; *Sparks v. A. C. L. R. R. Co.*,

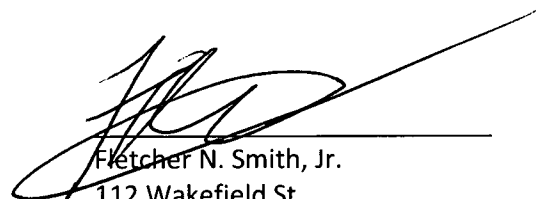
104 S.C. 266, 88 S.E. 739; Greer v. State Highway Department, 160 S.C. 510, 159 S.E. 35; Cherry v. Singer Sewing Machine Co., 165 S.C. 451.

In this case, the trial judge dismissed the case against the Agent, Dr. Crosby at the conclusion of the Plaintiff's case on directed verdict. Since the trial court judge exonerated Dr. Crosby the agent, it is illogical for the verdict to stand against the principal.

Consequently, where the trial judge in this present action dismissed and held blameless the agent Dr. Bobby Crosby for any conversion of the appellee's personal property, the trial judge was duty bound then at that point to direct a verdict in favor of Woodbine Estates LLC.

CONCLUSION

For the foregoing it is clear that the trial court judge admitted error and that the verdict of the jury and judgment of the court must be reversed.

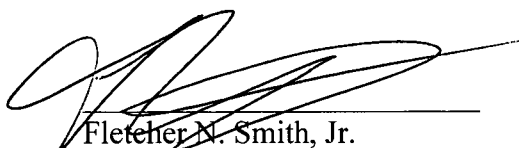


Fletcher N. Smith, Jr.
112 Wakefield St.
Greenville, S.C. 29603
864-232-6541
Attorney For the Appellant

November 7, 2013

CERTIFICATE OF COUNSEL FOR BRIEF

Counsel for the Appellant hereby certifies to the best of his knowledge that this Brief complies with Rule 211(b).



Fletcher N. Smith, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
COMMON PLEAS COURT

The Honorable Eugene C. Griffith

Case No. : 2013-001064

PATRICK BOWIE

Appellant

Certificate of Service

vs.

WOODBINE ESTATES, LLC

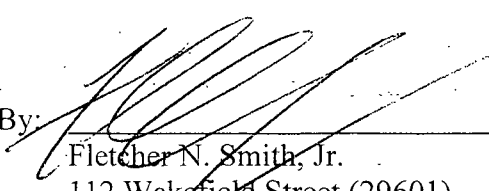
Respondent.

I, Fletcher N. Smith, Jr., hereby certify that I have this 8th day of November 2013 served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

PLEADING(S): Original and 14 copies of the Record on Appeal and Brief On Court of Appeals and 3 copies of the Record and Brief to Respondent's Counsel

PARTY SERVED: The Honorable Jenny A. Kitchings
SC Court of Appeals Clerk of Court
PO Box 11629
Columbia, SC 29211

R. Jamison Tinsley, Jr., Esq
Tinsley & Tinsley, PC
PO Box 49145
Greenwood, SC
Fax: (864) 229-8001

By: 

Fletcher N. Smith, Jr.
112 Wakefield Street (29601)
P.O. Box 10496 F.S.
Greenville, SC 29603
(864) 232-6541

ATTORNEYS FOR THE APPELLANT

Greenville, South Carolina
Dated: November 8, 2013