

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

7/7/91

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 10-CP-26-9113
Appellate Case No. 2012-213156

Scott Lemons and Gold Coast Resorts, LLC.....Appellants

v.

The McNair Law Firm, P.A.....Respondent

APPELLANTS' PETITION FOR REHEARING

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SC Court of Appeals

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The Appellants' petition this Court for a rehearing pursuant to SCACR 221 regarding its opinion filed March 19, 2014 in this matter.

The grounds for the petition are as follows:

1. The Court erred by making findings of facts not in the light most favorable to the Appellant.
2. The Court erred in finding that the Respondent acted fraudulently, which then protects it from being sued.
3. The Court misapprehended *Crowley v. Harvey & Battey and Lincoln v. Aetna Ins. Co.* and erred in its interpretation and application of those cases.

FACTS

It is uncontested in this case that a partner with the Respondent law firm settled a case for his client, at a mediation, when its client was not present, and not had given the attorney authority to make such a settlement. There is also no evidence in the record, contesting the Appellant Scott Lemons' testimony that he was summoned to the Respondent McNair Law Firm, to sign what he was told was a relinquishment of escrow funds. (Rpp. 210-213, Sup. Rpp. 7-12; Rpp. 214-221, Rpp 295; Sup. Rpp. 13-15; Sup. Rpp. 15-16, Rpp. 233) It wasn't until sometime later that he discovered that it was a full and final settlement of litigation that he and his attorney, a partner with the Respondent law firm, had valued at 1.5 million dollars.

ISSUES

1. The Court erred by making findings of facts not in the light most favorable to the Appellant.
2. The Court erred in finding that the Respondent acted fraudulently, which then protects it from being sued.

3. The Court misapprehended *Crowley v. Harvey & Battey and Lincoln v. Aetna Ins. Co.* and erred in its interpretation and application of those cases.

Nowhere in the Complaint does the Petitioner allege that the advice given to him by the Respondent to sign the settlement agreement was fraudulent, and the Respondent law firm has never alleged or argued that the advice was fraudulent. The Trial Court found that this case was barred by ratification, but made no finding of any fraudulent act, alleged or proven, by the Respondent law firm. However, this Court, reviewing this case decided at Summary Judgment, for the first time found that the Respondent law firm acted fraudulently in this matter, and erroneously concluded that this fraudulent behavior protects the Respondent from being sued in this matter. This Court erred in finding that this case is outside the settled case law in South Carolina that a client is bound by the actions of his attorney, and of the sound public policy of finality of judgments.

South Carolina has a strong public policy of finality of judgments, even upholding judgments involving intrinsic fraud. (*see Chewing v. Ford Motor Comp.* 354 S.C. 72, 86, 579 S.E.2d 605, 316 (2003))

SRCP 41 sets out the requirements for a final settlement between parties, including that a case is deemed settled upon the parties signing a written agreement which clearly sets out the settlement terms.

In the case at hand, Mr. Lemons did sign such a settlement agreement. He is now claiming his signature was based on the wrongful advice from the Respondent law firm. It is well settled law in South Carolina that his only recourse in such a matter would be to accept the benefits of the agreement, in an effort to mitigate his damages, and bring a suit against his attorney for malpractice. (*Crowley v. Harvey & Battey* 237 S.C. 68, 488, S.E.2d 334(1997); *Shelton v. Bressant* 312 S.C. 183, 439 S.E.2d 833(1993); *Poore v. Poore* 105 S.C. 206 89 S.E.2d 569 (1916); *Arnold v. Yarbrough* 281 S.C. 570 316 S.E.2d 416 (ct.ap.1984)

The Supreme Court of South Carolina has made it very clear that “if the attorney has an appearance of authority to confess or consent to judgment, it is ordinary binding and conclusive on the client, notwithstanding an actual lack of authority unknown to the court or the opposing party. The sole remedy in such a case being against the attorney” (*Lord Jeff Knitting v. Mills* 281 S.C. 374, 377, 315 S.E.2d 377,379(ct.ap.1974) (see also *Crowley at* 335)

As stated above, there is no allegation of even intrinsic fraud in this matter, and certainly not extrinsic fraud, which would have been the only way Mr. Lemons would have been able to attack the settlement he agreed to based on his attorney's advice. Mr. Lemons' sole remedy was to accept the benefits of the settlement, upon learning of the true facts of this case, and bring the action that he has currently has brought against the Respondent law firm.

Ratification has three elements 1. Acceptance of benefits. 2. Full knowledge of facts. 3. Affirmative election. (*Lincoln v. Aetna Causality Ins. Comp.* 300 S.C. 88, 386 S.E.2d 801 (ct.ap.1989) There is at least a question of fact as to whether or not Mr. Lemons had full knowledge of the facts before signing the settlement agreement and accepts the benefits.

Therefore, this Court is in error finding that he is estopped in this matter by ratification. The contradicted testimony by Mr. Lemons, is that he did not have knowledge of the facts prior to signing the settlement document. Once the settlement document was signed, South Carolinas public policy of finality of judgments, made it futile for Mr. Lemons to attack the judgment. By accepting the benefits of the settlement, and seeking judicial enforcement, the ruling in *Crowley* makes it very clear that this did not constitute ratification.

CONCLUSION

Based on the above the, Respondent would pray that this Court reconsider its opinion in this matter, grant a rehearing, and reverse its' decision, and remand this case for further proceedings.

Respectfully submitted,



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April 3, 2014


STATE OF SOUTH CAROLINA)
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COUNTY OF Horry)
)
Scott Lemons and Gold Coast Resorts)
LLC,,)
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Appellants,)
)
vs.)
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The McNair Law)
Firm, P.A.,)
)
Respondents.)
_____)

IN THE COURT OF APPEALS
IN THE FIFTEEN JUDICIAL CIRCUIT
Case No. 2012-213156

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2014, I served, via first class mail, at the address below, a copy of the Appellant's Petition for Rehearing pertaining to the above-referenced action.

Robert Stepp
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Vicky McCarter
Legal Assistant

Columbia, South Carolina
Date: 4-3-14