

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

J. GREGORY HEMBREE ON)
BEHALF OF HORRY COUNTY)
POLICE DEPARTMENT)
PLAINTIFF)

V.)

TAURUS .38 SPECIAL SN:sg53109)
1994 MONACO RV)
VIN: 1RF120611R1010972)
AND ONE THOUSAND EIGHT)
HUNDRED AND FORTY FIVE)
DOLLARS (\$1,845.00))
DEFENDANT PROPERTY)

MICHAELA ALBIN, INDIVIDUALLY)
AND AS PERSONAL)
REPRESENTATIVE OF THE)
ESTATE OF MICHAEL JAMES)
ALBIN)
DEFENDANT)

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-11-1281/2009-CP-11-3128/2009-CP-
26-3127

FINAL ORDER

2014 MAY 15 PM 2:31
ALBINO, JAMES
CLERK OF COURT

This matter is before the Court following remitter by the Court of Appeals for determination of the value of the 1994 Monaco RV to be paid by the plaintiff's to the defendant.

On January 24, 2009 Horry County Police Department (hereinafter HCPD) in conjunction with other law enforcement agencies conducted an undercover operation involving gambling and illegal drugs at a local establishment. At the conclusion of that investigation the defendant Michael Albin was arrested. In conjunction with the arrest for the illegal drugs, HCPD seized the defendant property under the civil forfeiture statute.

On September 22, 2009, Judge Stephen John heard a motion for summary judgment filed by the defendant. At that hearing the State agreed to withdraw the cause of action alleging forfeiture based upon the weight of the narcotics. As to the other causes of action, the Court declined to grant summary judgment.

Judge Larry Hyman conducted a bench trial on this matter July 28, 2011. A final order was issued August 12, 2011, granting seizure of the 1994 Monaco RV to the plaintiff.

The defendant through his attorney filed a motion to reconsider on August 26, 2011. The Court heard this motion January 11, 2012 and issued an Order denying the motion on April 10, 2012. A notice of appeal was filed by the defendant on April 26, 2012.

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JUN 16 2014

SC Court of Appeals

The Court of Appeals heard oral arguments on April 11, 2013 issuing an Order reversing the award of the 1994 Monaco RV on June 12, 2013. Remittitur followed on July 2, 2013.

HCPD in the interim had sold the 1994 Monaco RV and were not able to return the property to the defendant when remittitur was received.

Defendant requested a hearing for a determination of damages to include attorney fees.

A hearing was scheduled November 12, 2013. Partial testimony was received from both the defense and the state. The Court concluded that expert testimony was needed to determine the value of the vehicle and suspended the trial allowing both parties to seek out additional witnesses in this regard and issued an order requiring the State to produce certain items to the defendant.

The Court reconvened on January 31, 2014 and heard additional testimony from both parties and this Order follows.

After review of the testimony and exhibits the Court makes the following determinations:

1. The most credible evidence of value for the motor home comes from the testimony of Daniel Knight, Sales Manager for Camping World. He reviews values of motor homes on a regular basis. He used the NADA guide for a period of January through April 2009, which is inclusive of the actual seizure date;
2. The retail value of a forty (40) foot three-hundred (300) horsepower Crown Royal series by Monaco Coach Corporation was Fifty Six thousand ninety dollars (\$56,090.00). The options to add value are the tow package (valued at \$1000.00), Custom Signage (valued at \$500.00), and the CB radio (valued at \$50.00), added together bring the total amount to Fifty Seven Thousand Six Hundred and Forty dollars (\$57,640.00). Defendants testimony regarding additional options were incorrect and the Court declines to give any added value to these;
3. Attorney fees to the defendant are not appropriate in this case. Under South Carolina Code Section 15-77-300, Defendant would be entitled to reasonable attorney fees upon showing each of the following: that the State's actions were without substantial justification, defendant was the prevailing party and there are no special circumstances that would make the award of attorney's fees unjust. Defendant is the prevailing party and argument may certainly be made that the actions of the state in seizing the motor home lacked substantial justification. However, equally a persuasive argument may be made that the state acted with substantial justification. An agency's loss on the merits does not create a presumption that its position was not substantially justified. The Court looks to the agency's position in litigating the case to determine whether it is one which has a reasonable basis in law and fact (Video Gaming Consultants, Inc, v. S.C. Department of Revenue, 2004 WL 884833, S.C. App, 2004);
4. The Court does not need to determine substantial justification because the defendant's claim for attorney's fees fails on the issue of existence of special circumstances. Seizure was the result of the defendant's use of the motor home to distribute and/or use illegal drugs. The mere fact that the defendant was able to dispose of his criminal charge through an intervention program is of no importance to the Court. It is undisputed that the defendant invited undercover agents


who were investigating defendant's illegal gambling into the motor home to use and/or buy marijuana.

WHEREFORE IT IS ORDERED,

- a. HCPD shall pay to the defendant the sum of Fifty Seven Thousand six hundred and forty dollars representing the value of the 1994 Monaco Motor Home no longer in their possession.

And it is so ordered.

Conway South Carolina
Dated: 5-12-14



Judge Larry Hyman

David J. Canty, P.A.

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June 13, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

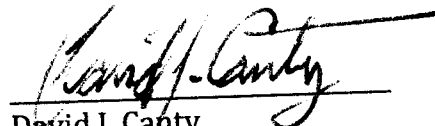
Re: J. Gregory Hembree on behalf of Horry County Police Department,
Respondent, vs. Michaela Albin individually and as personal representative of
the estate of Michael Albin, Appellant, Case Nos. 09-CP-26-1281,3127,3128

Dear Ms. Kitchings,

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- 1.) Proof of service of the Notice of Appeal upon Respondent.
- 2.) A copy of the order which is challenged on appeal.
- 3.) A filing fee of \$100.00.

Sincerely,



David J. Canty
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Cc: Donna E. Elder
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