

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit

Case Number: 2014-000139

Shou Y. Martin, Appellant,

vs

Wilmer (John) Rife and Barbara Ann Doomey, Respondent.

INITIAL BRIEF OF APPELLANT

C. RAUCH WISE
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Attorney for the Appellant

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Statement of Issues on Appeal

Did the trial judge err in granting a judgment notwithstanding the verdict on the ground that Shou Martin did not own the property when the record contained evidence that Shou Martin owned the property sold to the Wilmer John Rife and Barbara Doomey?

Statement of the Case

Procedural History

Shou Martin filed her suit for breach of contract against Wilmer John Rife and Barbara Doomey on December 31, 2010. The Defendant filed and answer on February 3, 2011 denying the allegations of the complaint and numerous counterclaims.

The case was tried before the Honorable J. Cordell Maddox, Jr. on September 6-7 2012. The jury returned a verdict in favor of Mrs. Martin in the amount of \$46, 774.21. Upon the motion of Mrs. Martin, the trial court on June 13, 2013 added prejudgment interest at the statutory rate in the amount of \$19,172.21. Mr. Rife and Mrs. Doomey then filed a motion for a new trial and judgment notwithstanding the verdict on January 6, 2014.

On January, Judge Maddox granted the motion of the defendants without prejudice. Mrs. Martin filed her notice of appeal on January 17, 2014.

Factual History

Shou Martin, with her son being primarily responsible, opened a private club in Anderson, South Carolina known as Simons' of Anderson, Inc.. Rec. on App. at 26, ll 24-25 to 29, ll 1-15. Mrs. Martin bought the equipment for the business in Anderson due to the fact that her son did not have the funds to start the business. Rec. on App. at 29, ll 1-15. Her son operated the business for about three and a half to four years. Rec. on App. at 30, ll 5-6.

In June of 2007 her son was killed in a motorcycle accident. Rec. on App. at 30, ll 23-25 to 31, ll 1-2. Mrs. Martin then started running the business but soon realized that she needed to sell the business. Rec. on App. at 31, ll 3-14. She then began discussion with John Rife whom she knew from his being employed in Greenwood, South Carolina and his being a

regular customer at Simons' of Anderson. Rec. on App. at 31, ll 15-25 to 31, ll 1-18. The idea of Mr. Rife buying the business originated with Mr. Rife. Rec. on App. at 32, ll 22-25 to 33, ll 1-13.

The parties ultimately signed an agreement to sell the equipment for Seventy Thousand (\$70, 000) Dollars. Plaintiff's Exhibit 1. The agreement provided that in the event any third party made a claim to any of the equipment, then Mrs. Martin would hold them harmless. Mr. Rife testified that he was purchasing the equipment and he was not concerned with who actually owned the equipment as long as Mrs. Martin would hold him harmless for any claim by a third party. Rec. on App. at 93, ll 12-25. He further said he had no reason to doubt that Mrs. Martin owned the equipment and he had no dispute with her right to sell the equipment. His main concern was the condition of the equipment. Rec. on App. at 98, ll 9-25 to 99, ll 1-2.

Mr. Rife testified that shortly after he purchased the business he began to have trouble with some of the equipment. He noticed some of the alleged problems within 60 days of opening the business. Rec. on App. at 110, ll 17-22. He made some repairs to the equipment within the first three months of owning the business. Rec. on App. at 105, ll 5-22. In August of 2008, after he had completed the repairs, he made a payment to Mrs. Martin in the amount of \$3,142.00 When making the payment he did not mention that the equipment was not satisfactory nor did he subsequently write her and complain about the equipment. Rec. on App. at 111, ll 9-25 to 112, ll 1-6.

Both Mr. Rife and Mrs. Doomey testified they had the opportunity to inspect the building and the equipment before they purchased the equipment. Rec. on App. at 89, ll 4-25; 90, ll 15-25 to 91, ll 1-11; Rec. on App. at 132, ll 15-25 to 134, ll 1-12. 143, ll 10-25 to 144, ll 1-

25. They did contend that they had to pay for the pool tables. Pursuant to the guarantee provision of the contract, the jury decided that issue in their favor and gave them a credit for the \$1,500 they paid for the pool tables.

ARGUMENT

Question I

Did the trial judge err in granting a judgment notwithstanding the verdict when the record contained evidence that Shou Martin owned the property sold to the Wilmer John Rife and Barbara Doomey?

The appellate courts in South Carolina have long recognized the rule that a case must be submitted to the jury if there is a scintilla of evidence to support the verdict. The same rule applies when a trial judge grants a judgment not withstanding the verdict. *See, Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 603 S.E.2d 605 (2004); *Smalls v. South Carolina Dept. of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (2000); *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (1994); *Smith v. Safeco Life Ins. Co.*, 303 S.C. 131, 399 S.E.2d 427 (1990); *Copeland v. Southern Ry. Co.*, 76 S.C. 476, 57 S.E. 535 (1907).

This Court has said “A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004). Here the jury heard the testimony that Mrs. Martin had purchased the equipment for her son. They also heard the testimony of Mr. Rife that he had no reason to doubt Mrs. Martin owned the property. Rec. on App. at 98, , ll 9-12.

The trial judge granted a judgment not withstanding the verdict based upon his

conclusion that Mrs. Martin did not prove she owned the assets she sold.¹ Mrs. Martin testified she paid for the equipment. Rec. on App. at 29, ll 2-25. She testified that she sold the equipment she owned to the defendants. Rec. on App. at 39, ll 18-25. The defendants even testified that who owned the equipment was not so much of a concern to them if Mrs. Martin would protect them from any third party claim. Mr. Rife testified as follows:

Q. [By Mr. Wise] And did you have any concern as to whether or not Ms. Martin owned the equipment when you signed the agreement?

A. No

Q. All right. And one of the reasons you didn't have any concern is that she agreed, in that agreement, to hold you harmless if any third person came in and claimed that property.

A. That's true.

Rec. on App. at 93, ll 17-25.

Q. All right. And, in fact, you have no reason to believe - - to not believe Ms. Martin when she says that she paid for the equipment and put it in there?

A. I took her word for it, yes.

Q. Correct. All right. And no one else has come in and said "No, your're wrong. It's mine."

A. No

Q. Okay. So, you don't dispute if or whether or not she had the right to sell it?

A. Pardon?

Q. Your dispute is not whether or not she had the right to sell it?

A. My main dispute is the condition.

Rec. on App. at 98, ll 9-21.

Thus, the trial judge granted a judgment notwithstanding the verdict on an issue that was not seriously contested by the defendants. Their argument was the condition of the equipment and their claim that the business was not as profitable as they had been lead to

¹ The order of the trial court says "this matter is hereby vacated and the matter is dismissed without prejudice." He did not clarify exactly what the dismissal without prejudice entailed.

believe. The jury resolved those issues against the defendants. The defendants have not contended that the jury erred in that determination.

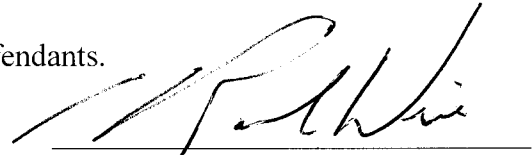
While counsel for the defendant argued to the jury that Mrs. Martin did not own the equipment, that factual issue was resolved against the defendants. The defendants now contend that the property is owned by Simons' of Anderson, Inc. Aside from some depreciation, the defendants offered no testimony that Simons' of Anderson, Inc. was the rightful owner of the equipment Mrs. Martin sold. The defendants wanted the equipment. They were not concerned who it belonged to as long as Mrs. Martin would protect them from any third party claim. The defendants have not met their burden of proving Simons' of Anderson, Inc. owned the property.

The defendants signed an agreement with Mrs. Martin that they would pay her for the equipment. They have for over six years had the use of that property to further their business. They never offered to return the property because they contended that Mrs. Martin did not have title to the property. They simply want to keep the equipment and not pay for it. They have not offered to tender the amount of the judgment to Simons' of Anderson, Inc. and Mrs. Martin so as to eliminate any question of title. They simply do not want to pay according to the contract they signed. The jury found all factual issues against them.

CONCLUSION

As the issue of the ownership of the property was resolved against the defendants and testimony at trial created a jury issue as to ownership, the trial court erred in granting a judgment notwithstanding the verdict in favor of the defendants.

June 10, 2014



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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on June 10, 2014, she did deposit in the United States Mail with proper postage affixed thereto, a copy of Initial Brief of Appellant and Designation of Matter in the above case addressed to Michael F. Mullinax, P.O. Box 2665, Anderson, South Carolina, 29622.

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SWORN to and Subscribed

Sandy Traynham

before me this 10 day

of June, 2014.

Mary Jane Harter (L.S.)

Notary Public for South Carolina

My Commission expires: 11/30/22

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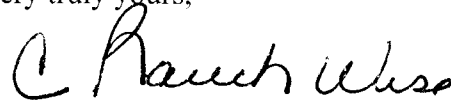
Re: Shou Y. Martin vs. Wilmer (John) Rife and Barbara Ann Doomey, 2014-000139

Dear Ms. Kitchings:

Enclosed herewith is the original Initial Brief and Designation of Matter concerning the above referenced matter, together with the original Affidavit of Service

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/mjh

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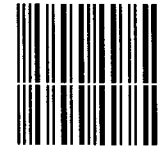
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