

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 Judge

C.A. No.: 2010-CP-04-0554

Appellate Case No. 2014-000139

Shou Martin, Appellant

vs.

Wilmer (John) Rife and Barbara Ann Doomey, Respondents

INITIAL BRIEF OF RESPONDENT

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ISSUE ON APPEAL

- I. **Did the Trial Judge rule correctly that the Plaintiff did not have standing to bring an action on contract for the sale of property and good will of Simon's of Anderson, Inc., a South Carolina non-profit corporation?**

STATEMENT OF THE CASE

Shou Martin, the named Plaintiff, filed a suit for breach of contract against Wilmer John Rife and Barbara Ann Doomey, the Defendants, on December 31, 2010. The Defendants filed their Answer and a number of Counterclaims on February 3, 2011, denying the allegations of the Complaint.

The case was tried before the Honorable J. Cordell Maddox, Jr. on September 6 - 7, 2012. At the close of the Plaintiff's case, the Defendants made the appropriate motions for a directed verdict and renewed the Motion at the conclusion of the trial. A jury verdict was returned in favor of Shou Martin individually in the amount of \$46,774.21. The Defendants filed a JNOV Motion on September 11, 2012. The Order denying the JNOV Motion was filed June 14, 2013. The Defendants filed a Motion to vacate or reconsider on June 21, 2013. The Honorable J. Cordell Maddox vacated the Judgement on January 6, 2014. Martin filed a Notice of Appeal on January 17, 2014.

STATEMENT OF FACTS

In the case before the Court, Shou Martin, the Plaintiff, in the agreement, [Plaintiff's Exhibit 1] which was drawn by her attorney, failed to disclose, that Simon's of Anderson, Inc. was a not for profit corporation organized pursuant to S.C. Code §61-6-1600. The Plaintiff refused to provide any documentary evidence to substantiate the claim to compensation during discovery and at Trial. [Tr. p. 42 - 43]. The Corporation was the owner and operator of the Bar, not Shou Martin. [Defendant's Trial Exhibit 4] [Tr. p. 40 - 41] Shou Martin failed to disclose to the Defendants that she had no individual right to sell anything which belonged to

Simon's of Anderson, Inc., a non-profit corporation. The Agreement, in and of itself was false and fraudulent.

The Defendants filed their Interrogatories and Requests for Production on or about October 3, 2011 and waited for over two years for the Plaintiff to furnish any documentation of proof that she owned any interest in the business operated as New Simon's of Anderson, Inc. [Tr. p. 52]. The Plaintiff failed to furnish answers to the discovery; failed to provide answers when her deposition was taken, and failed to provide answers at Court when asked specifically as to any evidence of ownership of any of the corporate assets [Tr. p. 52].

ARGUMENT

I. Did the Trial Judge rule correctly that the Plaintiff did not have standing to bring an action on contract for the sale of property and good will of Simon's of Anderson, Inc., a South Carolina non-profit corporation?

The Plaintiff made no motion to amend her pleadings at any time, and the Defendants tried the case on the basis that Shou Martin as an individual, had no interest in and could not recover in her individual capacity. The private club (Simon's of Anderson, Inc.), its contents and its good will was operated as a non-profit corporation, pursuant to the provisions of S.C. Code Ann. §61-6-1600 and was subject to the regulations R.7-401-3401.4 (a - f).

The 2005 corporate tax return for Simon's of Anderson, Inc. shows indisputably that the assets and inventory of the corporation were treated as being owned by the corporation and not by Shou Martin (Defendant's Trial Ex. 4). All actions must be prosecuted by the real party in interest and Shou Martin

was not the real party in interest. Shou Martin as an individual [in the context of this case], had no standing to prosecute this action. Having no standing as an individual, deprives the Court of jurisdiction and presents no justiciable controversy as was set forth in the Brock v. Bennett case *infra*.

The trial judge ruled correctly when he granted judgement notwithstanding the verdict and vacated the jury verdict, on the basis that Shou Martin as an individual, had no standing to bring the lawsuit; the Court had no jurisdiction in that there was no justiciable controversy before the Court and further, the fact that Shou Martin was not the real part in interest. If the Court had allowed the judgement to stand, then the provisions of S.C. Reg. R:7-401.4 (E), would be rendered meaningless.

As a matter of law, pursuant to S.C. Reg. R. 7-401.4 (E), Shou Martin, individually, is not allowed to profit in any manner from the assets and/goodwill of Simon's of Anderson, Inc.

S.C. Reg. R. 7-401.4 E. Upon dissolution, liquidation or final termination of the operations of the organization, its residual assets must not inure to the direct benefit of any member or shareholder but must be turned over to one or more nonprofit organizations which are organized and operated for charitable purposes or for such other purposes as are authorized under Section 61-6-1600.

The Court, in Brock v. Bennett 313 S.C. 513, 443 S.E. 2d 409 (Ct. App. 1994) stated:

“Standing is a fundamental requirement for instituting an action... No justiciable controversy is presented unless the Plaintiff has standing to maintain the action... Once it is determined a Plaintiff has no standing to prosecute, the Court must dismiss the action.”

Standing refers to the fundamental requirement for instituting an action. Bank of America, N.A. v Draper 401 S.C. 214, 746 S.E. 2d 478 (Ct. App. 2013).

Shou Martin was given every opportunity to produce evidence from the discovery request; to the deposition; and by her testimony at trial to provide evidence of ownership apart from the corporation. She admitted in her testimony that Simon's of Anderson, Inc. was operated as a non-profit corporation and she further could not produce and did not produce any documentary evidence of any right to maintain suit in her individual capacity for anything. See the following Transcript excerpts:

Transcript, p. 40, Mullinax cross-examination of Shou Martin:

Q: And Simon's of Anderson, Inc. was a non-profit corporation?

A: Yes.

Q: And you incorporated Simon's of Anderson in October of 2003?

A: Yes.

Q: You have always been familiar with the requirements of South Carolina Law to operate a non-profit corporation?

A: Yes.

Transcript, p. 40, and Transcript p. 41, continued:

Q: And in order to operate a private club you've got to be a non-profit corporation:

A: Yes.

Q. And as part of the rules and regulations of the State of South Carolina, when a non-profit corporation sells or dissolves, it has to give all of its profits to another non-profit corporation, doesn't it?

A: I don't understand what you're saying about that.

Q: When a non-profit corporation, under South Carolina Law, sells its assets, it has to give its profit to another non-profit corporation. Right?

A: Yeah. But, ok – go ahead.

Transcript p. 42, Cross-examination continued:

Q. You haven't provided us any list of invoices or anything to show that you actually did own anything, have you?

A. I don't provide the.. what?

Q. Have you provided me any bills to show that you paid for any of the equipment that was in Simon's?

A. I got some. Yes, I can.

Q. But you didn't provide them to me when I asked for them. Did you?

Mr. Mullinax: Your Honor, I would just ask that she answer my question.

The Court: Yes ma'am, just make sure you answer the questions.

Transcript p. 43: Ms. Martin: Ok.

The Court: Answer yes or no, I'll let you explain the answer.

Ms. Martin: Yeah, ok, ok.

Q. You have provided me no evidence, no documentary evidence, that you purchased or owned anything, have you?

A. No.

Transcript p. 48: Cross-examination continued:

Q. And although I've been asking you to provide me documentation of proof that you owned anything in the bar, for over 10 months, you still have not provided me any documents to prove that you owned anything, have you?

A. Ok. Danny working on that.

Transcript p. 49:

Q. You have not provided me any documents to proof that you individually, owned anything. Have you?

A. I guess you say, no. I say, no.

Transcript p. 52:

Q. You've got no proof that you owned a thing. Do you?

A. Now, you tell me to bring that.

Q. You've got no proof in this Courtroom today, that you owned anything?

A. I didn't show it to you. I guess not.... I know it my heart it does.

The standard of review for a trial judge where a Motion for JNOV has been made, is to view the evidence in the light most favorable to the non-moving party. The Trial Court must grant the Motion when the evidence yields only one inference... An Appellate Court may not overturn the decision of the Trial Court under the State standard, if there is any evidence to support the Trial Court's ruling. Rogers v. Norfolk Southern Corporation 356 S.C. 85, 588 S.E. 2d 87 (2003).

As the Trial Court stated in its Order, there is no evidence in the record to establish ownership by Shou Martin. The only evidence in the record is that of the corporate tax return showing ownership in New Simon's of Anderson, Inc., a non-profit corporation.

Contrary to the argument of the Plaintiff, as to the evidence required to support the granting of a Motion for JNOV, the scintilla reference has no bearing on this Court's review.

CONCLUSION

It is respectfully requested that the Order of J. Cordell Maddox, Jr. be upheld in its entirety and this appeal be dismissed with costs.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have this day served Respondent's Initial Brief and Designation of Matter to Be Included in the Record, on the Attorney for the Appellant, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Mr. C. Rauch Wise
Attorney & Counselor at Law
305 Main Street
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August 5, 2014

Laura C. Mullinax

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August 5, 2014

The Honorable Jenny Abbott Kitchings
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Re: Shou Martin v. Wilmer (John) Rife and Barbara Doomey
Appellate Case No.: 2014-000139

Dear Ms. Kitchings:

Enclosed for filing are the originals and one copy each of the Respondent's Initial Brief, along with the Designation of Matter to Be Included in the Record on Appeal, and Proof of Service.

By copy of this letter I am serving copies of the Respondent's Initial Brief, Designation of Matter to Be Included in the Record, and Proof of Service on Mr. C. Rauch Wise, attorney for the Appellant.

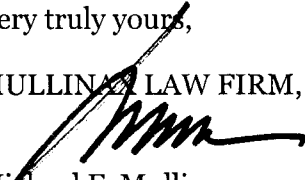
Please return filed copies of the above documents to me in the self-addressed, stamped envelope I have provided.

Thank you for your assistance in this matter.

With kindest regards, I am

Very truly yours,

MULLINAX LAW FIRM, P.A.


Michael F. Mullinax

MFM/lcm

Enclosures

cc: Mr. C. Rauch Wise

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