

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 07-CP-38-717

William Parker and Dorothy Parker, Respondents,

v.

Pier Abdullah and Aazim Abdullah
Aka Lynwood K. Daniels, Appellants.

MOTION FOR REHEARING

The Court issued its opinion on February 22, 2012, and affirmed the lower court decision in Opinion 2012-UP-107. The Appellants, by and through their undersigned attorneys, hereby make the following Motion for Rehearing in accord with Appellate Rule 221 and respectfully represent unto this Honorable Court as follows:

1. An incorrect measure of damages was used by the lower court and the Court of Appeals. The Court looked to Conner vs Alvarez, 285 SC 97, 328 SE2d 334 (1985) and the principal of law that the Appellate Court would not overturn findings of fact which have any evidence to support them. It further held that when calculating damages a non-breaching party should be placed in a position it would have enjoyed had the contract been performed. Madren vs Bradford, 378 SC 187, 661 SE2d 390 (Ct. App. 2008). The Conner case is one where the purchaser sued for specific performance and in such a case, the damages are measured by the credit to be applied pursuant to the contract. In this case, this Court, and the lower court, failed to take into account that the Plaintiffs did not sue for specific performance. Rather, they took the funds they would have paid to the Defendants and

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purchased another house. They were in fact placed in the same position they would have been had the contract been performed. The only evidence of damages was the loss of some \$550 of extra expenses they had. They did not introduce any evidence that they were damaged by paying a fair market rental value for the time they occupied the house. They did not sue for specific performance and were not entitled to the credit provided for in the contract. There being no proof of any damages other than \$550, there is no evidence to support the finding that of the trial court. The Court seemed to fixate upon this narrow language in the contract and to make some assumption that regardless of proof the Plaintiffs were entitled to the credit of 100% of their payments. However, this assumption overlooks the actual facts proved at trial and the fact that the Plaintiffs did in fact receive the benefit of their bargain. They received a place to live for the period of the lease and paid the agreed monthly lease payments for that privilege. At the end of the lease, they took their money and bought a house. They proved it cost them damages of \$550 to purchase another house and move to that house. They did not offer any proof the house was of lesser value or any other financial loss. This Court has ignored the actual facts proved at trial and adopted a reading of the contract which is not supported by law of facts to make a determination on damages which is not supported by the record. The awarded damages were purely based upon speculation and not on any facts proved at trial. South Carolina Federal Sav. Bank. Vs. Thornton-Crosby Development Co., Inc., 303 SC 232, 399 SE2d 8 (Ct. App. 1990 aff'd South Carolina Federal Sav. Bank vs. Thornton-Crosby Development Co. Inc., 310 SC 232, 423 SE2d 114 (1992).

2. The conclusions of the trial court are not supported by law and this court failed to correct the errors of law of the lower court. In its opinion, the Court only addressed the maxim it is bound by

the lower court's findings of fact if there is evidence to support those findings.¹ However, the Court is required to correct errors of law. See Madren vs Bradford above. The award of 100% of the rent paid without any factual determination that any damages were suffered, in a case for damages, not specific performance is in the nature of punitive damages which is an error of law in a contract case. Williams v. Riedman, 339 SC 251, 529 SE 2d 28 (2000). Additionally, the interpretation of the contract by both courts was in favor of the Plaintiffs and against the Defendants. This is an error of law as an option contract is to be interpreted in favor of the Defendants in this instance. It is well settled in South Carolina that option contracts are strictly construed in favor of the optionor and against the optionee. See Cotter v. James L. Tapp Co., 267 S.C. 647, 230 S.E.2d 715 (1976). Thus, the Court failed to properly apply the law regarding the interpretation of the contract and the measure and proof of damage. Rather, the Court's decision awards punitive damages to the Plaintiffs and does not take into account the value of the rental of the premises during the lease period.

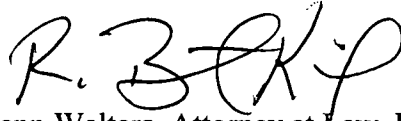
CONCLUSION

Because of the Court's improper application of law and failure to adhere to the actual facts and damages proved at trial, the Defendants are entitled to a Rehearing in order to address these errors of law and of findings of fact.

[SIGNATURE ON FOLLOWING PAGE]

¹ The Appellants address in their first argument why there are no facts proved to support the award of 100% of the rent paid under the lease.

Respectfully submitted, this the 8th day of March, 2012, at Orangeburg, South Carolina.

A handwritten signature in black ink, appearing to read "R. Bentz Kirby". The signature is stylized with large, flowing letters.

Glenn Walters, Attorney at Law, PA

R. Bentz Kirby

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Glenn Walters, Sr.
R. Bentz Kirby, of Counsel

March 8, 2012

The Honorable Tanya A. Gee
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Re: Parker vs Abdullah, 2007-CP-38-717
Appeal from Orangeburg County
Case Tracking Number 2010150790

Dear Ms Gee:

Enclosed you will please find the original and six (6) copies of the Appellant's Motion of a Rehearing. Please file the original and stamp a copy with the date and time it is filed. Please return the copy in the stamped self addressed envelope which is enclosed. By copy of this letter, we are serving counsel for the Respondent.

With kind personal regards, I am

Yours very truly,


R. Bentz Kirby

cc: J. Christopher Wilson

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O. Davie Burgdorf, Master-in-Equity

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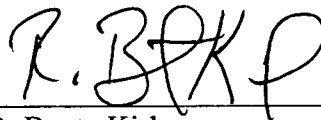
Pier Abdullah and Aazim Abdullah
Aka Lynwood K. Daniels, Appellants.

CERTIFICATE OF SERVICE

On the 8th day of March, 2012, the undersigned served a copy of the Appellants' Motion for a Rehearing upon opposing counsel by placing a copy in the United States Mail, postage fully paid, to the following address:

J. Christopher Wilson
Wilson, Luginbill & Kirklands, LLC
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Bamberg, SC 29003

Glenn Walters, Attorney at Law, PA



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