THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Appellate Case No. 2014-000605

Senneka Trading Incorporated, Respondent,

v.

George O. Nwachukwu, Eleke Ijioma
Celtex Export Corporation, Celtex,
Inc., and Josling Inc. Defendants,

v.

Of Whom George O. Nwachukwu and Josling Inc. are the Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

Thomas A. Belenchia
T. Camden Shealy
A BUSINESS LAW FIRM, LLC
Post Office Box 3421
Spartanburg, South Carolina 29304
(864) 699-9801
Attorney for Appellants

TABLE OF CONTENTS

Arguments in Reply..... 1

I. The lower court action was one in equity..... 1

II. The Respondent is not missing any goods..... 2

III. The Respondent did not prove that it made an offer or paid consideration for the goods on the three shipping containers..... 3

IV. Assuming goods from the last three trailers shipped from Walkertown were the goods on the three shipping containers, though the total weight of the trailers was 52,000 to 62,000 pounds less than the total weight of the shipping containers, the Appellants purchased the goods from the last three trailers and therefore own the goods from the three shipping containers..... 3

Conclusion..... 5

TABLE OF AUTHORITIES

CASES

Campbell v. Carr, 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004)..... 1

Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 437 S.E.2d 122 (Ct.App.1993)..... 2

Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989)..... 1

ARGUMENTS IN REPLY

I. The lower court action was one in equity.

The Respondent attempts to break down the lower court's judgment into several different causes of action, look at each piece, and tilt the balance. However, the lower court granted relief under one theory, which was specific performance of the contract between the Appellants and Respondent. The Respondent's textile goods came from Walkertown, NC to Spartanburg, SC, the Appellants sorted and baled the goods then delivered the baled goods to the Respondent's warehouse, and lastly, the Respondent paid the Appellants a fee for commissions and baling. That relationship existed from January 2013 to mid-April 2013. The Appellants did not dispute the terms of the contract, only ownership of goods that were on three shipping containers. The lower court ordered the Appellants to deliver baled goods to the Respondent's warehouse and directed the Respondent to pay the Appellants a fee for commissions and baling of those goods. The lower court did not award the Plaintiff money damages, but found it equitable to award the Respondent possession of the disputed goods, the value of which would have been difficult to ascertain because they were scraps of textile goods and going to be sold on the streets of Nigeria. "An action for specific performance is one in equity." Campbell v. Carr, 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004). This Court's "review of a case heard by a master who enters a final judgment is to determine facts in accordance with [its] own view of the preponderance of the evidence." Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989).

II. The Respondent is not missing any goods.

The Respondent claims that some of the goods it shipped to Spartanburg are missing.[1] However, as clarified in its Brief, what the Respondent actually means is that not all of the goods it sent to Spartanburg left Spartanburg. The Appellants disagree with the first statement and agree with the second statement. The "missing" goods are accounted for.

48,020 pounds of the Respondent's Walkertown goods that were never loaded onto shipping containers are sitting in the Appellants' warehouse. (Dec. 17 Transcript p. 105, lines 18-24) Three air conditioners the Respondent took from Walkertown were in the Respondent's warehouse at the time of trial and made up some weight on the trailers brought to Spartanburg. (Dec. 17 Transcript p. 174, lines 24-25, Defendant's Exhibit 8, Incident Report p. 5, paragraph 9). Between 10 to at least 15 racks of the Respondent's Walkertown goods were in the Respondent's warehouse at the time of trial. (Dec. 17 Transcript p. 44, lines 10-21; p. 110, lines 2-16) Each rack can weigh between 2,000 and 3,000 pounds. (Id.) At least 10 to 15 bales of Respondent's goods were in the Respondent's warehouse at the time of trial. Each bale can weigh 1,000 to 1,400 pounds. (Id.) Two (2) unloaded trailers of goods were parked between the parties' warehouses during the police investigation. (Defendant's Exhibit 8, Incident Report, p. 5, paragraph 9). The trailers shipped in April 2013 weighed roughly 31,000 to 40,000 pounds. (Plaintiff's Exhibit 4). Both of those trailers together could weigh close to 80,000 pounds. The total poundage of all of the goods and items could weigh between 143,020 pounds and 200,020 pounds.

[1] The Initial Brief of the Respondent claims that 207,000 pounds of goods are missing. The Respondent told police that 150,000 pounds of goods were missing. The Respondent's Complaint said that 210,000 pounds of goods were missing. The Respondent testified that 109,439 pounds of goods were missing and at least one document to support that number was a duplicate. (Dec. 16 Transcript p. 58, lines 23-25; Dec. 16 Transcript p. 60, lines 4-7).

III. The Respondent did not prove that it made an offer or paid consideration for the goods on the three shipping containers.

The goods on the three shipping containers were never identified at trial.[2] In its Brief, the Respondent *only* cites testimony to prove the Respondent owned goods on certain *trailers* that were shipped from Walkertown to Spartanburg, but none of that testimony relates to ownership of the Appellants' *three shipping containers* or the origin of the goods on those three shipping containers. The Respondent cannot prove that it made any offer or paid any consideration for unidentified goods. The lower court erred when assuming, without any supporting evidence, that the goods on the three shipping containers came from the last three trailers shipped from Walkertown.[3] Furthermore, since the goods were unidentified, the seller of those goods was unidentified, and the Respondent could not prove that the seller accepted any offer for those goods from the Respondent.

IV. Assuming goods from the last three trailers shipped from Walkertown were the goods on the three shipping containers, though the total weight of the trailers was 52,000 to 62,000 pounds less than the total weight of the shipping containers, the Appellants purchased the goods from the last three trailers and therefore own the goods from the three shipping containers.

The Respondent admits on page 3 of its Brief that the Respondent only purchased goods from five buildings in Walkertown, North Carolina and never claimed to have made an offer on goods in any other building. The seller of the Walkertown goods testified that the goods from

---

[2] None of the citations in the Initial Brief of Respondent relate to the issue of what goods were on the three shipping containers.

[3] The necessary elements of a contract are offer, acceptance, and valuable consideration. Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 437 S.E.2d 122 (Ct.App.1993).

the last *four* trailers came from a sixth building of which the Respondent was unaware. Therefore, the Respondent did not purchase the last *three* trailers of goods and does not own the goods from the three shipping containers.

The Respondent relies on the testimony of two of the Appellants' former workers, who were working for the Respondent at the time of trial, to support the notion that the goods in dispute were purchased by the Respondent from Walkertown. Those two employees did not know all parties agreed that the Appellants had purchased a trailer of goods from Walkertown in late 2012 and another trailer in April numbered 53105. The workers also thought that the name on the Wicker weight tickets determined who owned the incoming goods. The Respondent's email to the seller of the goods on May 10, 2013 proves that was not true. It states, "Please can you confirm that George is the one responsible for the following trailers which was billed to me (Senneka Trading) by Wicker, George told me that you guys charged him and Wicker should not charge me. Truck # 53105, 5383, 5350, and 175 loaded and delivered after my settlement of accounts with you guys dated April 15th, 2013." (Defendants' Exhibit 5). Clearly the workers, who simply sorted and baled goods for the Appellants, neither understood the business relationship between the seller, Appellants, and Respondent, nor that the Appellants began purchasing Walkertown goods long before the Respondent.

The Respondent sent a text message to the Appellants on May 8, 2013 that says, "Per our agreement, these 4 trucks are yours, 5350, 175, 53105, 5383." (Defendants' Exhibit 4). Those trailers were the last four trailers purchased from Walkertown. At trial, the Respondent admitted that the Appellants owned the goods on trailer number 53105. (Dec. 16 Transcript p. 55, lines 3-4). Clearly the Respondent admitted in the text message that the Appellants owned the goods on the other three trailers just as much.

CONCLUSION

Base on the foregoing, in addition to the arguments made in the opening brief, the Appellants respectfully request this Court to reverse the lower court judgment with respect to ownership of the goods on the three (3) shipping containers identified as PONU 749556-6, PONU 764375-0, and MRKU 2080225. This court should find that the Appellants' rightfully purchased the goods on the three containers and grant the Appellants' possession of the goods from those three containers. If any goods from the three shipping containers are missing, the court should allow the Appellants to receive a money judgment from the Respondent to be prorated at $300,000, which was the Respondent's estimated value of the goods on the three shipping containers. Furthermore, the Appellants should receive the temporary injunction bond or value thereof for the improper holding of the goods in the Respondent's and the Appellants' warehouses throughout the duration of trial.

Respectfully submitted,

Thomas Camden Shealy
T. Camden Shealy
Thomas A. Belenchia
A BUSINESS LAW FIRM, LLC
Post Office Box 3421
Spartanburg, South Carolina 29304
(864) 699-9801
(864) 699-9803 FAX

August 14, 2014

ATTORNEYS FOR THE APPELLANTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Appellate Case No. 2014-000605

Senneka Trading Incorporated, Respondent,

v.

George O. Nwachukwu, Eleke Ijioma
Celtex Export Corporation, Celtex,
Inc., and Josling Inc. Defendants,

v.

Of Whom George O. Nwachukwu and Josling Inc. are the Appellants.

CERTIFICATE OF SERVICE

I, the undersigned attorney for the Appellants, George O. Nwachukwu and Josling, Inc., do hereby certify that I have served the Clerk of Court for the South Carolina Court of Appeals and all counsel in this action with a copy of the Appellants' Initial Reply Brief and a Certificate of Service by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

a. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

b. Matthew A. Henderson
Henderson, Brandt & Veith, P.A.
360 E. Henry Street, Ste. 101
Spartanburg, SC 29302

c. Joshua Matthew Henderson
Henderson, Brandt & Veith, P.A.

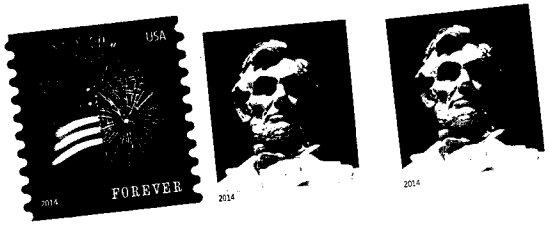
360 E. Henry Street, Ste. 101
Spartanburg, SC 29302

A Business Law Firm, LLC,

Thomas Camden Shealy
T. Camden Shealy
P. O. Box 3421
Spartanburg, SC 29304
(864) 699 - 9801

August 14, 2014

A Business Law Firm, LLC
P.O. Box 3421
Spartanburg, SC 29304



Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

29211$1629 B012