

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**The Honorable Marvin H. Dukes, III
Beaufort County Master-in-Equity**

Case No.: 2012-CP-07-01929

EWB, LLC.....Respondent,

vs.

ISLAND TIRE SERVICE, INC.,
KAREN WATSON, TERRY FOWLER, TER/KAR, LLC and
BARBARA KAREN WATSON as Personal Representative
of the Estate of Billy Lee Watson.....Defendants,

of whom

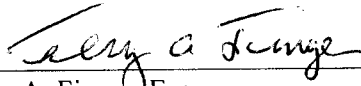
KAREN WATSON, TER/KAR, LLC and BARBARA KAREN WATSON
as Personal Representative of the Estate of Billy Lee Watson..... Appellants.

AMENDED NOTICE OF APPEAL

The Appellants appeal the Order of the Honorable Marvin H. Dukes, III dated July 31, 2014. The Order was received by counsel for the Appellants on August 25, 2014.

September 9, 2014

FINGER & FRASER, P.A.



Terry A. Finger, Esq.
P. O. Box 24005
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(843) 681-7000
Attorneys for Appellants

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SEP 11 2014

SC Court of Appeals

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Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

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EWB, LLC,)
Plaintiff,)

CASE NO. 2012-CP-07-1929

SEP 11 2014

vs.)

ORDER

SC Court of Appeals

Island Tire Service, Inc., Karen Watson,)
Terry Fowler, TER/KAR, LLC, and)
Barbara Karen Watson as Personal)
Representative of the Estate of Billy Lee)
Watson,)
Defendants.)

FINDING OF FACTS
AND CONCLUSIONS OF LAW

DATE FILED
2014 SEP 12 22
CLERK OF COURT

This matter comes before me upon Motion of Plaintiff seeking Partial Summary Judgment for the disbursement of a portion of the net proceeds from the sale of real estate for the reimbursement of tax liens paid by Plaintiff which were the obligation(s) of one or more of the Defendants incident to the sale of property. Plaintiff is requesting that the Court use its equitable powers to remedy what is a clear breach of contract by the seller to an Asset Purchase Agreement dated May 13, 2011.

Plaintiff was represented by William M. Bowen, and the Defendants by Terry Finger, Esquire. The joint affidavit of Plaintiff and its attorney with attachments (the "Affidavit") was presented in support of the Motion. Berryman W. Edwards III, manager of the Plaintiff, was also present and offered to the Court and Defendants' attorney for examination.

Based upon presentation of counsel and the following facts put in evidence by the Affidavit, which were in essence undisputed, I find and conclude as follows:

FINDING OF FACTS

1. The Court has jurisdiction of the parties and subject matter of this suit.
2. In May of 2011, Island Tire, by its agents and/or shareholders Karen Watson and Terry Fowler, entered into an "Agreement for Purchase and Sale of Assets of Island Tire Service, Inc." (the "Agreement") to Plaintiff for a sales price of \$1,250,000.00
3. Paragraph 10 of the Agreement sets forth the representations and warranties of the Seller. The term "Seller's knowledge" was specifically defined to mean "the actual knowledge of Karen Watson and/or Terry Fowler." (Agreement, Page 8, Paragraph 10).
4. Section 10.3 of the Agreement provided, among other things:

✓

- a. Seller is the owner of, and has good and marketable title to the Assets, and the Assets are not encumbered by any mortgage, lien, pledge, or obligation of any nature, whether accrued, absolute, contingent, or otherwise, and whether due or to become due, which Buyer shall or will succeed to by reason of its purchase of the Assets. Seller shall transfer all of the Assets to Buyer, free and clear of all mortgages, pledges, security interests, charges, liens or encumbrance...
5. Incident to the Agreement, Plaintiff entered into leases for two (2) locations owned by the Estate of Billy Watson and TER/KAR ("North Store" and "South Store") upon which the business purchased by Plaintiff was to be operated. TER/KAR owned the North Store, and the Estate of Billy Watson owned the South Store.
6. At the closing of the transaction contemplated by the Agreement, Defendants received the sales price and delivered a Bill of Sale which contained essentially the same representations as those of the Agreement.
7. The business was sold with the existing IRS liens unsatisfied, which constituted a misrepresentation and breach of the terms of the Agreement.
8. Plaintiff alleges Karen Watson and Terry Fowler had or should have had knowledge of the IRS tax liens against the business.
9. Barbara Karen Watson is the Personal Representative and sole beneficiary of the Estate of Billy Lee Watson, which is being administered in the Probate Court of Beaufort County, South Carolina under Case Number 2009-ES-07-00746.
10. Plaintiff alleges that at all times pertinent to the matters alleged, Defendants, individually, and/or as members, and/or shareholders, and/or Personal Representative, were acting in concert with one another, with each being the alter ego of the other.
11. At or after closing there remained Tax Liens in excess of \$225,000.00.
12. When notified of the liens Defendants repeatedly represented to Plaintiff the tax liens would be satisfied from the proceeds of an upcoming the sale of North Store.
13. The sale of North Store was concluded without objection of Plaintiff for a sales price in excess of \$2,000,000.00. The tax liens against Island Tire, Inc. were not satisfied in full. The tax liabilities of Defendants Watson and Fowler were satisfied.
14. The sales proceeds from the sale of the North Store were distributed to or for the benefit of all or some of the personal obligations of Defendants.
15. The tax liens remained unpaid until they were satisfied by Plaintiff through the payment of \$225,672.56.

16. In January 2014, Defendants entered into an Agreement of Purchase and Sale for the sale of South Store for \$1,650,000.00.
17. The sale of the South Store was concluded and a portion of the net proceeds remaining after the sale were distributed for the benefit of all or some of the Defendants.
18. As of this time, \$183,525.00 of the sales proceeds remains in escrow pending a further Order of this Court.
19. Defendants' attorney represented to Plaintiff and its attorney it would be paid from the sales proceeds of the sale of the North Store and Plaintiff relied upon such representations and had a right to do so as the representations were made by Defendants' attorney who is an officer of this court.
20. The representations of Defendants' attorney were made with the knowledge and consent of Defendants.
21. It appears efforts at settlement of this suit were attempted but never concluded.
22. Defendants' attorney fees of \$45,935.06 were earned in performing services necessary to accomplish the sale of the 2 properties.
23. Had delinquent taxes been paid from the sales proceeds of the 2 properties little if anything would have remained for distribution to Defendants.

CONCLUSIONS OF LAW

It is well established law that a Court sitting in equity has broad discretion. Such has been enunciated as "Once invoked, the scope of a district court's equitable powers is broad, for breadth and flexibility are inherent in equitable remedies." In this connection see *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 249, 715 S.E.2d 348, 352 (Ct. App. 2011) [Citing: *Brown v. Plata*, 131 S. Ct. 1910, 1944, 179 L. Ed. 2d 969 (2011), *Hutto*, 437 U.S., at 687, n. 9, 98 S.Ct. 2565 (quoting *Milliken v. Bradley*, 433 U.S. 267, 281, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977), in turn quoting *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971))].

Further, Courts have the inherent power to do all things reasonably **necessary to ensure that just results are reached to the fullest extent possible**. See *Buckley v. Shealy*, 370 S.C. 317, 323-24, 635 S.E.2d 76, 79 (2006) (citing *Ex Parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct.App.1983)). *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 252, 715 S.E.2d 348, 354 (S.C. Ct. App. 2011) "[E]quity regards as done that which ought to have been done; equity applies substance over form" *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 352-53 (S.C. Ct. App. 2011)

The principle "equity regards as done that which ought to be done" applies in cases where the

party seeking equitable relief establishes “a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 253 715 S.E.2d 348, 354 (Ct. App. 2011) [Citing: *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393–94, 197 S.E. 375, 380 (1938)]. The obligation for payment of the tax debt is clearly established and the facts are uncontested. EWB, LLC paid a large amount of money to ensure that marketable title to the Assets was conveyed to it and that there would be no outstanding obligations, liens or otherwise attached to the Assets.

In *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 253-54, 715 S.E.2d 348, 354-55 (Ct. App. 2011) the Court sets forth as follows:

The notion “equity looks to substance rather than form” evolved out of judicial regard for that which ought to be done. *Id.* at 393, 197 S.E. at 380. This maxim applies by “dispensing with pure formalities which would otherwise defeat the equity.” *Id.*; see also *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent. *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480, 16 Pet. 455, 10 L.Ed. 1029 (1842). **After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity.** *Wilkie*, 187 S.C. at 393, 197 S.E. at 380. A court of equity should scrutinize the conduct of the plaintiff with the utmost care, to ascertain he has done everything which ought to have been done to secure the action requested. *Corbus v. Alaska Treadwell Gold Mining Co.*, 187 U.S. 455, 465, 23 S.Ct. 157, 47 L.Ed. 256 (1903). This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. *Camp v. Boyd*, 229 U.S. 530, 559, 33 S.Ct. 785, 57 L.Ed. 1317 (1913).
[Emphasis added]

To allow Karen Watson and/or the Estate of Billy Watson to retain the proceeds from the sale of the South Store would amount to an unjust enrichment. Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 256-57, 715 S.E.2d 348, 356 (Ct. App. 2011) [Citing: *Dema v. Tenet Physician Servs.–Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009); *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15 (Ct.App.1988)].

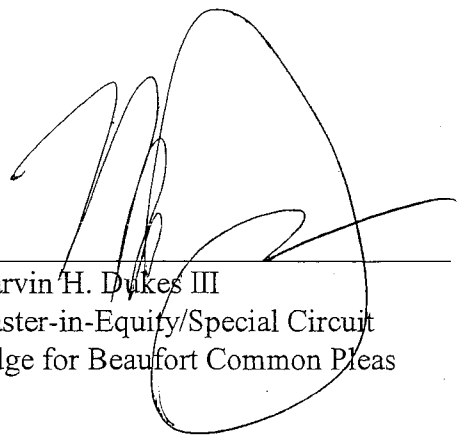
I conclude as follows:

1. Plaintiff shall have judgment against the Defendant Island Tire Service, Inc., in the amount of \$225,672.56.
2. Escrowed funds of 183,525.00 shall be disbursed as follows

- a. To Finger and Fraser \$45,935.06.
 - b. To Plaintiff \$137,590.94, this amount to be a credit towards the judgment of \$225,672.56.
3. Although there was an attempt to settle this suit it was never consummated.
 4. All other issues contained in the Complaint and Counter Claim remain open for determination at a later time.

AND IT IS SO ORDERED.

July 17, 2014
Beaufort, South Carolina



Marvin H. Dukes III
Master-in-Equity/Special Circuit
Judge for Beaufort Common Pleas

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EWB, LLC,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: WILLIAM M. BOWEN, P.A.

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff	Island Tire Service, Inc.	\$225,672.56
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

8/11/14

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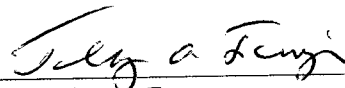
KAREN WATSON, TER/KAR, LLC and BARBARA KAREN WATSON
as Personal Representative of the Estate of Billy Lee Watson.....Appellants.

PROOF OF SERVICE

I certify that I have served a copy of an Amended Notice of Appeal, by depositing a copy of it in the United States Mail, postage prepaid, on September 9, 2014, addressed to Respondent's attorney of record, William M. Bowen, Esquire, William M. Bowen, P.A., P.O. Drawer 6128, Hilton Head Island, SC 29938.

September 9, 2014

FINGER & FRASER, P.A.



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Attorneys for Appellants