

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2300613

FILED-CLERK OF COURT
GREENVILLE CO.
PAUL B. BICKENS

Kenneth Lee Holbert Jr

Greenville Technical
College

2014 DEC 16 PM 4 15

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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); SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; 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: _____

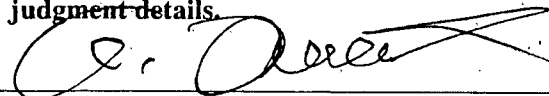
INFORMATION FOR THE JUDGMENT INDEX

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)

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

2063
Judge Code

12/12/2014
Date

162

STATE OF SOUTH CAROLINA - CLERK OF COURT IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE GREENVILLE CO. SO. OF THE THIRTEENTH JUDICIAL CIRCUIT
PAUL B. WICKENS IMMER

Kenneth L. Holbert, Jr., 2014 DEC 16 PM 4 15 C.A. No. 2013-CP-23-00613

Plaintiff,

vs.

ORDER

Greenville Technical College,

Defendant.

INTRODUCTION

Plaintiff, Kenneth L. Holbert, Jr. (hereinafter "Holbert" or "Plaintiff"), brought suit against Defendant Greenville Technical College (hereinafter "College" or "Defendant") asserting conversion of property Plaintiff allegedly left at the College between 2000 and 2006. A trial was held in Greenville County on October 15-16, 2014, with the Honorable Alexander Macaulay presiding. After presentation of the evidence, the jury returned a verdict for the College. Thereafter, Plaintiff filed a Motion for a New Trial pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. A hearing on this Motion was held on December 8, 2014, attended by Jamison Tinsley of Tinsley & Tinsley in Greenwood, South Carolina, for the Plaintiff, and Courtney M. Laster of Boykin & Davis, LLC, in Columbia, South Carolina, for the College. Based upon the following, Plaintiff's Motion for a New Trial is hereby denied.

FACTS

Plaintiff began employment with the College's Engineering and Technology Department in 1989 and his employment was terminated on or about January 12, 2007. At trial, Plaintiff testified that he "donated" several items to the College during his employment, but was unable to produce tangible evidence that he purchased any of the allegedly converted items, or that he

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[Signature]


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subsequently carried them to the College.

When Plaintiff's employment with the College ended, Plaintiff was afforded an opportunity to retrieve any items belonging to him. (Def. Exhibit 1; Def. Exhibit 2). At trial, Plaintiff testified he returned after his employment was terminated to collect his belongings. Although Plaintiff was given an additional opportunity to collect any items he believed belonged to him, Plaintiff admitted he did not return to retrieve any additional items. Further, Plaintiff testified no one prohibited him from requesting another opportunity to retrieve any items he believed belonged to him. The College also introduced an email from Plaintiff to a College representative wherein Plaintiff officially donated any items remaining at the College. (Def. Exhibit 3).

Defendant's Associate Vice President of Human Resources, Susan Jones, testified that Plaintiff was given ample opportunity to collect any belongings upon the termination of his employment, as indicated by a letter stating the same. (Def. Exhibit 1). Ms. Jones testified that while Plaintiff's employment with the College ended in 2007, he failed to contact her regarding any property issues until 2011. Ms. Jones further testified that, upon request, Plaintiff was unable to provide sufficient proof of ownership as to the allegedly converted items, which made it difficult to locate the items claimed by Plaintiff. Ms. Jones testified that, between 2007 and 2012, many of the areas in the Engineering and Technology Department were renovated, and many items may have been surplus, as is customary with outdated State property.

After closing arguments, the trial judge charged the jury on the law of conversion, including consent and the defense of nonexistence or lack of identity, gifts, and the affirmative defenses of abandonment, laches, and the Tort Claims Act. The jury subsequently returned with a verdict for the College and Plaintiff filed a Motion for a New Trial, arguing the evidence does not support the jury's verdict.

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STANDARD OF REVIEW


The grant or denial of a new trial rests within the sound discretion of the trial court. In determining whether to grant or deny a motion for a new trial, the trial court should determine whether there was any evidence to support the jury's decision. Haselden v. Davis, 341 S.C. 486, 534 S.E.2d 295 (Ct. App. 2000). The trial court should construe the evidence and the reasonable inferences to be drawn therefrom in the light most favorable to the non-moving party. Manios v. Nelson, Mullins, Riley & Scarborough, LLP, 389 S.C. 126, 697 S.E.2d 644 (Ct. App. 2010).

FINDINGS

I. Conversion

In South Carolina, conversion is the unauthorized assumption and exercise of the right of ownership over the goods or personal chattels of another. Kirby v. Home Motor Co., 295 S.C. 7, 366 S.E.2d 259 (Ct. App. 1988). In order to establish a claim for conversion, a plaintiff must establish: (1) either title to or the right to possession of the items allegedly converted; (2) that the defendant converted the property to his/her own use; and (3) that the use was without the plaintiff's permission. Id.; Moseley v. Oswald, 376 S.C. 251, 656 S.E.2d 380 (2008). A "gift" is a voluntary transfer of property by one person to another, without any consideration or compensation to the donor. McLeod v. Sandy Island, Corp., 265 S.C. 1, 216 S.E.2d 746 (1975).

Based on the evidence produced at trial, a reasonable jury could have found Plaintiff failed to meet his burden of proving the essential elements of conversion. At trial, Plaintiff alleged the College converted certain property belonging to him. However, Plaintiff was unable to specifically state what items he carried to the College; rather, Plaintiff submitted various photographs of items he claimed he lent to the College. In addition, Plaintiff admitted that several of the photographs were not taken at the College and that he was unable to provide documentation that the allegedly converted items were ever purchased by him or carried to the

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College. Finally, the College introduced a letter from Plaintiff to a College representative wherein Plaintiff specifically donated certain items to the College.

Accordingly, although Plaintiff testified that he loaned the items to the College, a reasonable jury could have found that Plaintiff either failed to establish ownership in the items allegedly converted or that Plaintiff donated or gifted the items to the College. McLeod, supra; Kirby, supra; Moseley, supra; Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) (finding the fact that testimony that is uncontradicted does not necessarily render it credible).

II. Affirmative Defenses


A. Abandonment

An intention to abandon property is ascertained from acts and conduct of the owner or holder of the property and may be inferred from the surrounding circumstances and shown by acts and conduct clearly inconsistent with any intention to retain and continue the use or ownership of the property or right. S. Silicia Min. & Mfg. Co. v. Hoefler, 215 S.C. 480, 56 S.E.2d 321 (1949). Lapse of time and nonuser are also circumstances to be taken into consideration. Id.

In the present case, Plaintiff admitted he was asked to come and retrieve any items belonging to him in 2007, but that he failed to do so. Plaintiff also admitted he waited four (4) years before inquiring as to property he believed he left at the College. Finally, Plaintiff admitted he later submitted correspondence to the College specifically donating the items he was currently claiming. Based on this evidence, a reasonable jury could have found that Plaintiff abandoned any interest in the items allegedly converted.

B. Laches

Laches is the delay in asserting a legal right for an unreasonable length of time in circumstances permitting assertion of the right and signifying abandonment or surrender of the

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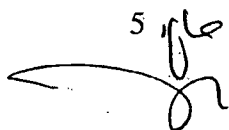
right by one who later seeks to enforce it. Sloan v. Dep't of Transp., 379 S.C. 160, 666 S.E.2d 236 (2008). The elements of this defense in South Carolina are as follows: (1) delay by one party; (2) for an unreasonable or unexplained length of time; and (3) prejudice to the other party if the right is now asserted. Robinson v. Estate of Harris, 388 S.C. 616, 698 S.E.2d 214 (2010). Under the doctrine of laches, if a party does not seasonably assert his rights, and by unreasonable delay causes his adversary to detrimentally change his position, then equity will ordinarily refuse to enforce those rights. RWE NUKEM Corp v. ENSR Corp., 373 S.C. 190, 644 S.E.2d 730 (2007). Laches connotes not only an undue lapse of time, but also negligence and an opportunity to have acted sooner. Skipper v. Perrone, 361 S.C. 207, 674 S.E.2d 510 (Ct. App. 2009).

In the present case, and as discussed above, Plaintiff admitted he waited four (4) years before inquiring as to property he believed he left at the College. Plaintiff also admitted he was given ample time to collect all his belongings and failed to do so. Finally, Plaintiff admitted he submitted correspondence to the College specifically donating the items he was currently claiming. Ms. Jones also testified that the areas in which Plaintiff worked had been renovated on several occasions between 2007 and 2012, making the possibility of locating any remaining property extremely difficult.

Based on the evidence submitted at trial, a reasonable jury could have returned a verdict for the College based on laches, finding the College was materially prejudiced by Plaintiff's delay in requesting the items, as supported by Ms. Jones' testimony.

C. Tort Claims Act

South Carolina Code Annotated, Section 15-78-90(5), provides that a governmental entity is not liable for its exercise of discretion or judgment in the performance or failure to perform any act which is in the discretion or judgment of the College or employees. In this case, Ms. Jones testified that if property at the College becomes obsolete and/or is unclaimed, it would

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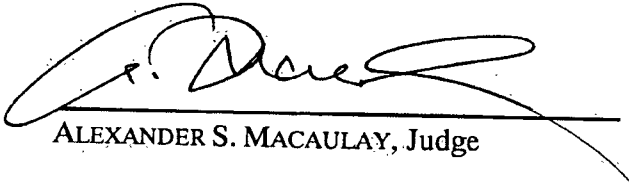
most likely be discarded or surplused. Ms. Jones also testified that when initially contacted by Plaintiff, she asked College employees to search for the items on numerous occasions. As discussed above, Ms. Jones also testified the Engineering and Technology Department was renovated twice since Plaintiff's termination, thereby causing location of any property incredibly difficult. Accordingly, a reasonable jury could have found sufficient evidence existed that the College exercised its discretion in dealing with Plaintiff and his property issues.

This Court hereby finds ample evidence was introduced at trial which would allow a reasonable jury to conclude the College successfully proved its affirmative defenses. Moreover, evidence existing to support one affirmative defense is sufficient to sustain a verdict for the College. See Cole v. Raut, 378 S.C. 398, 663 S.E.2d 30 (2008) ("Under the two-issue rule, when a jury returns a general verdict in a case involving two or more issues or defenses, and the verdict is supported to at least one issue or defense that has been presented to the jury free from error, the verdict will not be reversed.")

CONCLUSION

For the foregoing reasons, this Court hereby denies Plaintiff's Motion for a New Trial.

IT IS SO ORDERED.


ALEXANDER S. MACAULAY, Judge

December 12, 2014
Walhalla, South Carolina