

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2013-CP-18-0368

Chang Hua Zeng,

Appellant,

v.

Coosaw Partners, LLC and Terry Kinder,

Respondents.

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ABUSE DISCRETION BY PROCEEDING WITH TRIAL WHEN THE PLAINTIFF'S INTERPRETER WAS NOT QUALIFIED, OR WAS INCAPABLE OF PROPERLY INTERPRETING BASED ON THE RECORD?
2. SHOULD THE COURT HAVE ALLOWED PLAINTIFF TO TESTIFY WITHOUT AN INTERPRETER WITHOUT FIRST MAKING A FINDING THAT NOT USING THE INTERPRETER WAS IN THE BEST INTERESTS OF THE PLAINTIFF?

STATEMENT OF THE CASE

On March 1, 2013, I, Chang Hua Zeng brought suit for fraud, breach of contract, and discrimination against Coosaw Partners, LLC and Terry Kinder. Coosaw Partners, LLC and Terry Kinder denied the claims, and counterclaimed for attorney's fees and costs under my lease with Coosaw Partners, LLC. The trial was held on April 8, 2014 and an order in favor of Coosaw Partners, LLC and Terry Kinder was filed on June 6, 2014. Chang Hua Zeng appeals.

FACTS

My first language is Chinese. I am not proficient in the English language. The case was originally continued so I could have an interpreter. I brought someone with me to the trial named Dawn Keltz who I know in the community that speaks Chinese and English. When the trial started she was sworn as an interpreter. However, as I started to tell the Court about my case, there were problems in my interpreter translating my statements from Chinese to English. R. p. 41. My interpreter is not trained in court interpretation and did not know what to do when the Defendants were speaking until the Judge instructed her. R. p. 42. Later in the trial my interpreter did not know

how to translate instructions from the Judge to me. R. p. 43-p.44, line 4. When I received the transcript of the trial, the parts of my testimony translated into English are not clear and do not make sense. R. p. 45, line 23-p. 46, line 15. At the trial I did not feel like the Judge understood what my case was about so I asked if I could try my English to explain to the Judge without the interpreter. R. p. 48, line 12. I then testified to the Judge without my interpreter, but I do not believe the Judge understood my case and the point of my case was not clear in the transcript. R. p. 48, line 12-p. 52, line 14.

ARGUMENTS

I. DID THE COURT ABUSE DISCRETION BY PROCEEDING WITH TRIAL WHEN THE PLAINTIFF'S INTERPRETER WAS NOT QUALIFIED, OR WAS INCAPABLE OF PROPERLY INTERPRETING BASED ON THE RECORD?

Pursuant to Section 15-27-155(A) of the South Carolina Code (2005): [W]henver a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice. *Melton v. Olenik*, 664 S.E.2d 487, 379 S.C. 45 (S.C. App., 2008).

In my case, although my interpreter speaks English and Chinese, she was not trained in court interpreting and there is no record that her qualifications were discussed with the Court to determine if she would be able to properly translate. From the very beginning of my case, there were problems in translating my case to the Judge. R. p. 40. Several times during the case the Judge had to instruct my interpreter to translate for me, and my interpreter did not always know how to translate the

Judge's instructions or statements to me. R. p. 43-p.44, line 4. When reading the transcript, my testimony through the interpreter is incoherent. *Melton v. Olenik*, 664 S.E.2d 487, 491, 379 S.C. 45 (S.C. App., 2008). The best interests of justice were not served and the trial should have been continued until a South Carolina court qualified interpreter could be located. Case law says this is an abuse of discretion and my case should be retried with a qualified interpreter. *Melton v. Olenik*, 664 S.E.2d 487, 379 S.C. 45 (S.C. App., 2008).

II. SHOULD THE COURT HAVE ALLOWED PLAINTIFF TO TESTIFY WITHOUT AN INTERPRETER WITHOUT FIRST MAKING A FINDING THAT NOT USING THE INTERPRETER WAS IN THE BEST INTERESTS OF THE PLAINTIFF.

Pursuant to Section 15-27-155(A) of the South Carolina Code (2005): [W]henver a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice. *Melton v. Olenik*, 664 S.E.2d 487, 379 S.C. 45 (S.C. App., 2008).

During my case I asked the Court to testify without the interpreter and using my English so I could better explain my case. R. p. 48, line 12. The Court allowed me to testify without my interpreter. When reading the transcript of my case, my own testimony and my testimony through the interpreter is incoherent. *Melton v. Olenik*, 664 S.E.2d 487, 491, 379 S.C. 45 (S.C. App., 2008).

However, my own testimony is more coherent and I believe the Court may have used my testimony more than my interpreter's in reaching its decision. There is not a finding on the record that I waived the use of a qualified interpreter or that not using an interpreter was in my best interests or in

the best interests of justice. Section 15-27-155(A) of the South Carolina Code (2005). Case law says this is an abuse of discretion and my case should be retried with a qualified interpreter. Melton v. Olenik, 664 S.E.2d 487, 379 S.C. 45 (S.C. App., 2008).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

January 16, 2014

Respectfully submitted,



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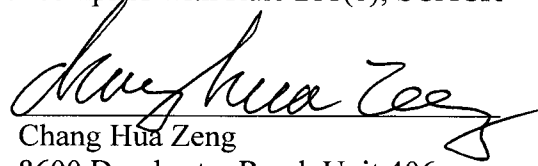
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CERTIFICATE OF APPELLANT

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR



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