

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Letitia Verdin, Circuit Court Judge

Case No. 2013-CP-23-5575

HHH Ltd. of Greenville, by
and through its Receiver,
Randy A. Skinner

Respondent,

v.

Randall S. Hiller, Robert E.
Hiller and Randall S. Hiller,
P.A.,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Court erred in transferring the case to the Master in Equity without the Defendants' consent and in violation of S.C.R.C.P. Rule 53.
- II. The Court erred in transferring the case to the Master in Equity thereby depriving the Defendant of his right to a jury trial.
- III. The Court erred in failing to grant Defendants' Motion for Summary Judgment, the error being that the Defendant was entitled to such ruling as a matter of law because Plaintiff relied solely on the pleadings.

STATEMENT OF THE CASE

This action was commenced by the filing of a Summons and Complaint on October 16, 2013 wherein the Plaintiff alleged that it had participated in the transfer of real property in violation of Section 27-23-10 of the South Carolina Code of Laws and a prior Court Order. Appellant timely moved to dismiss pursuant to Rules 12(b)(6) and 12(b)(7) which Motion was denied. Appellant thereafter timely answered and set forth seven affirmative defenses and two counterclaims both of which were law claims, expressly electing a jury trial on those claims.

On October 31, 2014 Plaintiff filed a “Motion for Reference to Master in Equity” pursuant to South Carolina Rules of Civil Procedure Rule 53.

A hearing before the Honorable Letitia H. Verdin was held on that Motion and Appellant’s Motion for Summary Judgment on December 18, 2014. On December 19, 2014 Judge Verdin issued an Order granting Plaintiff’s Motion for Reference to the Master in Equity. Appellant thereafter filed a timely Motion to Reconsider on January 6, 2015 pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure which were denied by Form Order of Judge Verdin dated January 8, 2015 and received by Appellant on January 12, 2015. Subsequently a corrective Order amending the January 8, 2015 Order dated February 25, 2015 was issued and received by Appellant on February 27, 2015.

This appeal timely followed.

ARGUMENTS

- I. **The Court erred in transferring the case to the Master in Equity without the Defendants' consent and in violation of S.C.R.C.P. Rule 53.**
- II. **The Court erred in transferring the case to the Master in Equity thereby depriving the Defendant of his right to a jury trial.**

On October 31, 2014 Plaintiff filed a Motion for Reference to Master in Equity upon the following grounds:

1. This is an equitable matter;
2. As evidenced by the Master's previous Order, the Master is knowledgeable of the facts and circumstances of this matter;
3. This matter centers on real property issues for which the Master is best suited to adjudicate; and
4. Judicial economy will be best served if the Master presides over this matter.
(Record)

The Court, without comment, granted the Motion. (Record)

The South Carolina Supreme Court has interpreted S.C.R.C.P. Rule 53(b) to authorize the Circuit Court to refer an action to a Master in Equity under four specific circumstances. (1) By consent of the parties, (2) If there is a default, (3) In actions with complicated issues to be tried before a jury, and (4) In all other actions upon application of any party or upon the Court's Motion. First Palmetto Bank and Trust Co. v. Boyles, 302 S.C. 136, 394 S.C.2nd 313 (S.Ct. 1990)

The Defendant did not consent and there is no default nor was there any contention by the Plaintiff that there were complicated issues to be tried before a jury. Thus, the only basis for referral would be pursuant to reason number 4, which only applies unless a request for a jury trial pursuant to Rule 38 is not made or has not been made.

None of the Plaintiff's stated grounds, even were they accurate, could meet those conditions.

"*This is an equitable matter*" is half true. The Plaintiff states two claims, a claim that it violated Section 27-3-10 of the South Carolina Code of Laws which is equitable and a claim that it violated an existing prior court order which is an action at law. (Record) Strangely, the second

cause of action relies upon a court order which contains a provision retaining jurisdiction to the Honorable Edward Miller, a fact which the Plaintiffs conveniently ignore.

“As evidenced by the Master’s previous Order, the Master is knowledgeable of the facts and circumstances of this matter” is simply not true. The prior Order is nothing more than a supplemental proceeding brought under Section 15-39-310, et. seq., appointing a Receiver and, most importantly, was a matter to which these Appellants were not a party. (Record)

“This matter centers on real property issues for which the Master is best suited to adjudicate,” is akin to saying that a breach of contract action for the sale of real property centers on real estate. Nothing about this action involves title to property nor, for that matter, is the Master particularly suited for hearing even a case such as the latter. The case, from the Plaintiff’s perspective, is about determining whether or not a valuable consideration was given and interpreting and applying a prior order, nothing more.

“Judicial economy will be best served if the Master presides over this matter” is nothing more than a bald statement unsupported by any fact or argument. It is unsupported because it is inaccurate. In truth judicial economy would best be served by allowing the jury issues and the non-jury issues to be heard by the same trial judge during the same trial as is common practice in the courts of this state.

In the instant case the Defendant has set forth compulsory counterclaims alleging fraud and breach of contract both of which are actions at law and for which a jury trial was duly demanded.

Accordingly, the Defendant is entitled under the Constitution of the State of South Carolina and Rule 38 of the South Carolina Rules of Civil Procedure to a jury trial on all issues so demanded and the trial court’s Order has deprived the Defendant improperly of that right.

While the Order of Reference must be reversed for depriving the Appellants of their right to a jury trial and being outside the scope of an Order of Reference pursuant to S.C.R.C.P Rule 53, State constitutional issues also arise under the “catch all” aspects of Rule 53.

Article I, Section III of the South Carolina Constitution grants to its citizens due process of law. Section IX insures its citizens that “all Courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” Article V of the Constitution, Section XI, establishes jurisdiction of the Circuit Court as being a general trial court with original jurisdiction in civil and criminal cases. Section XIII divides the states into judicial circuits and Section XIV provides for the rotation of judges within those circuits. Pursuant to the Constitution the General

Assembly enacted Section 14-1-70 of the South Carolina Code of Laws designating the courts of the state. Nowhere to be found within that designation is the Master in Equity. To the contrary the Master in Equity is separately described and his duties are set forth in Section 14-11-80, South Carolina Code of Laws

Accordingly, absent consent, a citizen of the State of South Carolina has a constitutional right to have his or her remedy litigated in the Circuit Court and by a Circuit Judge which is specifically provided with the power to hear and determine equitable and non-jury matters.

III. The Court erred in failing to grant Defendants' Motion for Summary Judgment, the error being that the Defendant was entitled to such ruling as a matter of law because Plaintiff relied solely on the pleadings.

While the writer is cognizant of the inability to appeal either the granting or denial of summary judgment this case justifies an exception to the general rule.

At the hearing on Plaintiff's Motion for Referral the Defendants' Motion for Summary Judgment was also scheduled and heard.

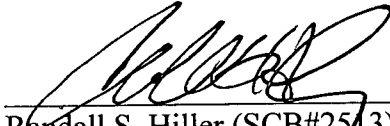
The record will reflect that the Plaintiff made no effort to comply with S.C.R.C.P. Rule 56(e) by responding with affidavits setting forth specific facts showing that there is a genuine issue for trial.

In that the granting of summary judgment is mandatory and perfunctory upon the failure of the non-moving party to respond by affidavits or as otherwise required there is no reason that this Court should not and could not correct that error of law in this appeal.

CONCLUSION

The Order under appeal has improperly denied the Appellant of the right to a jury trial and fails to meet any criteria for an involuntary referral pursuant to S.C.R.C.P. Rule 53 and therefore must be reversed. Appellant was entitled as a matter of law to the granting of its motion for summary judgment and the case should be remanded with instructions to grant the aforesaid motion.

(signature on following page)



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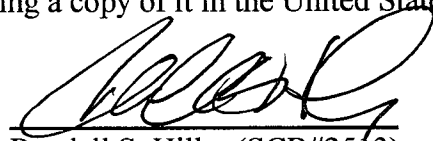
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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on M. Stokely Holder, Esq., John T. Crawford and Randy A. Skinner, Esq. by depositing a copy of it in the United States Mail, postage prepaid, on April 1, 2015.

April 1, 2015



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