

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No 2014-002410

Raymond D. Hobby

Respondent

vs

Mary T. Hobby

Appellant

vs

Frances B. Knowlton, individually and as trustee

Respondent

APPELLANT'S INITIAL REPLY BRIEF

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SC Court of Appeals

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Having read the Respondents' Briefs, a short reply is necessary. Please let this serve as a Reply to the Briefs of both Respondents.

(1) Neither the circuit court judge nor the Respondents address the fact that the judge made his ruling only after the judge re-wrote the agreement by changing the word "and" to "or". His Order states

"The explicit provisions of the Trust Agreement granted the Trustee wide discretion in selling trust assets. He could sell trust property to either beneficiary if the transaction was fair, reasonable, and for market value **or** if the beneficiaries could mutually agree on other terms. See Trust Agreement, Article IX, (a)(xxxii). Moreover, the terms of the Trust Agreement enabled the Trustee to sell trust property to one beneficiary without obtaining the consent of the other beneficiary."

The Court has no authority to re-write the terms of the Trust Agreement and no authority to change the word "and" to the word "or". The circuit court judge, in re-writing the terms of the Trust Agreement, violated very elementary rules of contract construction.

"Courts are without authority to alter a contract by construction or to make new contracts for the parties." *Gilstrap v Culpepper*, 283 S C 83, 86, 320 S E 2d 445, 447 (1984)

Furthermore, the court, in interpreting contracts should not concern itself with the wisdom or folly of the contract.

"The Court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. *McPherson v J.E. Sirmine & Co*, 206 S C 183, 206, 33 S E 2d 501, 510 (1945)." *Jordan v. Security Group, Inc.*, 311 S C 227, 428 S E 2d 705 (1993)

(2) Neither the circuit court judge nor the Respondents have addressed what the language in Article IX(xxxii) of the Trust means and what purpose the

language serves. In Article IX(xxxii), the Trustee is given broad and uncontrolled decision to sell trust assets but that authority is subject to two provisions when the sale was to either Transferor (Mr. Hobby or Ms. Hobby). The provision regarding sales to a Transferor (Mr. Hobby or Ms. Hobby) clearly limits the Trustee's authority to sell to a Transferor and protects a Transferor against the other Transferor getting a sweetheart deal with the Trustee. To hold otherwise would render the language "and any other terms mutually agreeable by the parties" meaningless.

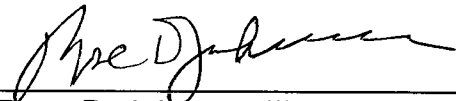
(3) The Trustee did not treat Mr. Hobby impartially. The Trustee supposedly accepted Mr. Hobby's offer on February 9, 2012. However, no contract was signed on February 9, 2012. The terms of the contract between Mr. Hobby and the Trustee which was signed on April 19, 2012 was materially and substantially different than Mr. Hobby's offer in his letter dated January 3, 2012. The Trustee never gave Ms. Hobby the opportunity to review the contract that Mr. Hobby and the Trustee signed on April 19, 2012.

(4) The Briefs of both Respondents recount the litigation history between the parties, presumably to try to prejudice Ms. Hobby in the eyes of the Court. Mr. Hobby's attorney has argued that Ms. Hobby "continues to litigate to the ends of the earth rather than move out." The Court is reminded that Mr. Hobby, not Ms. Hobby, brought this action and the action in the Magistrate's Court. Ms. Hobby also reminds the Court that Ms. Hobby supported her position in this case with affidavits of two experienced attorneys. This case must be judged based upon the record of the case, not Ms. Hobby's litigation of other actions.

(5) Ms. Hobby will rely on her brief as to other arguments

CONCLUSION

The Order granting summary judgment in favor of the Trustee and the Order granting summary judgment on the issue of liability in favor of Mr. Hobby should be reversed



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April 23, 2015

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Case No 2014-002410

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PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Benjamin C. Bruner, attorney for Respondent Raymond D. Hobby, and R. Davis Howser, attorney for Respondent Frances B. Knowlton, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 23rd day of April, 2015:

COUNSEL SERVED:
Benjamin C. Bruner, Esquire
Bruner Powell Wall & Mullins, LLC
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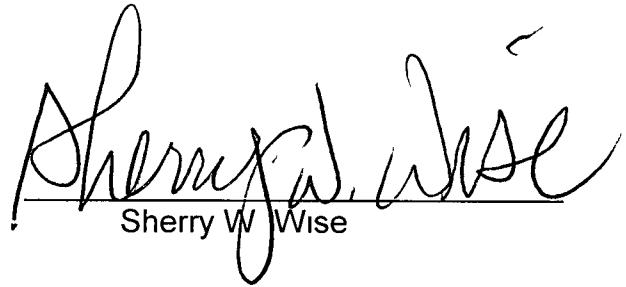
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PLEADINGS:
Appellant's Initial Reply Brief



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April 23, 2015

(Via Hand Delivery)

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE Raymond D Hobby v Mary T Hobby v Frances B B Knowlton
Case No 2014-002410

Dear Ms. Kitchings

Enclosed herewith are the original and a copy of Appellant's Initial Reply Brief regarding the above-referenced action. Please file the original and clock and return the additional copy to me.

With a copy of this letter to Benjamin C Bruner, attorney for Respondent Raymond D Hobby, and R Davis Howser, attorney for Respondent Frances B B Knowlton, I am serving a copy of the Initial Reply Brief upon them.

Sincerely,


Pope D Johnson, III

PDJIII/sww
Enclosures

cc Benjamin C Bruner, Esquire
R Davis Howser, Esquire

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