

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Appeal from Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

MAY 19 2015

SC Court of Appeals

Appellate Case N^o 2014-000139

Unpublished Opinion N^o 2015-UP-223
Submitted April 1, 2015 - Filed May 6, 2015

Shou Martin..... Appellant

vs.

Wilmer (John) Rife and Barbara Ann Doomey Respondents.

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Shou Martin, the Appellant above, hereby Petitions this Court to Rehear this matter based upon the following:

1. This Court failed to consider that the Defendants signed a written contract with the Plaintiff to obtain from her any and all interest she had in the property located in the business together with a guarantee from the Plaintiff that she would protect the Defendants from any claim by a third party. This Court failed to consider that the ruling by the court gave the Defendants the benefit of their bargain but did not give the Plaintiff the benefit of the bargain she made. In essence the Defendant received all of the equipment to which no third party had filed a claim and paid only a nominal fee for the equipment.

2. This Court failed to consider that the trial court specifically instructed the jury that if they believed the Plaintiff did not own the property, then they were to return a verdict in favor of the Defendants. (Rec. on App. at 201, ll 2-9). The testimony at trial established that the Defendants did not question the fact that Mrs. Martin had the right to sell the property. As Mr. Rife testified:

Q. All right. And, in fact, you have no reason to believe - - to not believe Ms. Martin when she says that she paid for the equipment and put it in there?

A. I took her word for it, ye.

Q. Correct. All right. And no one else has come in and said "No, you're wrong. It's mine."

A. No

Q. Okay. So, you don't dispute if or whether or not she had the right to sell it?

A. Pardon?

Q. Your dispute is not whether or not she had the right to sell it?

A. My main dispute is the condition.

Rec. on App. at 98, ll 9-21. See, also Rec. on App. at 93, ll 17-25

The testimony at the trial contained evidence sufficient to go to the jury that Mrs. Martin had purchased the property use in her son's business. Rec. on App. at 29, ll 2-25. This testimony as to the ownership was sufficient to create a jury question as to the ownership of the equipment, even if the ownership was a valid issue. Mrs. Martin's testimony was at the very least a scintilla of evidence that would permit the jury to find the facts in her favor.

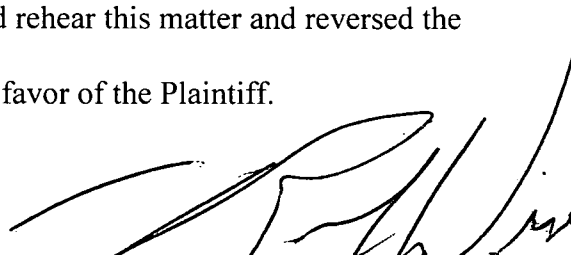
3. This Court erred in finding that Mrs. Martin lacked standing when she was a party to the written contract and her testimony was that she purchased the equipment for the business her son operated. Again, the issue of the ownership was a jury question which was resolved in favor of Mrs. Martin and against the Defendants.

4. This Court erred in finding that Mrs. Martin was not the real party in interest when her testimony was she owned the equipment that was sold and she was a party to the contract signed by the Defendants. The Defendants claimed that Mrs. Martin did not own the

property, and as such, they bore the burden of proving that fact. They introduced no evidence that the property was owned by a third party except for one pool table for which the jury gave them proper credit.

Based upon the above, this Court should rehear this matter and reversed the decision of the lower court dismissing the judgment in favor of the Plaintiff.

May 18, 2015



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AFFIDAVIT OF SERVICE

Personally appeared before me, Sandy Traynham, who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That, on May 18, 2015, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Petition for Rehearing in the above case addressed to Michael F. Mullinax, P.O. Box 2665, Anderson, SC 29622.

Sandy Traynham

Sworn to and Subscribed
before me this 18 day

of May, 2015.

Mary Jane Harter
Notary Public for South Carolina

My Commission Expires: 11/30/22

LAW OFFICE OF

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SC Court of Appeals

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Jenny Abbott Kitchings, Clerk
SC Court of Appeals
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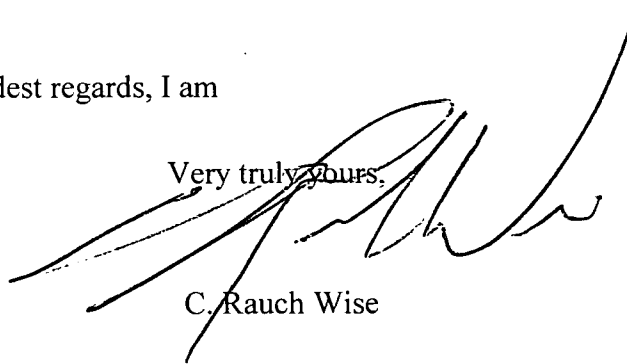
Re: Shou Y. Martin vs. Wilmer (John) rife and Barbara Ann Doomey
Appellate Case No. 2014 - 000139

Dear Ms. Kitchings:

I am enclosing herewith for filing the original and six copies of the Petition for Rehearing together with the original Affidavit in the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt

cc Michael F. Mullinax

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