

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAY 27 2015

APPEAL FROM CHARLESTON COUNTY
The Honorable Mikell R. Scarborough
Master in Equity

SC Court of Appeals

Case No. 2010-CP-10-7241

JOHN M. ENGLISH,.....Appellant,

v.

ELLEN SEXTON,.....Respondent.

INITIAL BRIEF OF RESPONDENT

G. Thomas Hill, (SC Bar No. 12055)
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Master properly enforce the Order of Arbitration with regard to the transfer of title to the Ford Explorer?

- II. Did the Master properly award attorney's fees to the former attorneys of Appellant?

STATEMENT OF THE CASE

The Arbitration Agreement and Award executed by the Honorable Richard Fields dated August 4, 2011, was approved by all parties to this action and confirmed by the Honorable Mikell R. Scarborough, Master in Equity of Charleston County on August 25, 2014. The divisions/distributions of funds/property as delineated in the Arbitration Agreement and Award have been completed as the date of this hearing except for the division/distribution of the sale proceeds from the sale of the Furman Home (60% to Appellant John M. English and 40% to Respondent Ellen Sexton), and, disposition of Ford Explorer vehicle and compensation due Respondent. The Master in Equity found that Appellant used and possessed the Ford Explorer vehicle since the date of purchase almost exclusively as the primary driver of said vehicle and that said vehicle was purchased Respondent for Appellant due to Respondent's ability at the time of purchase to obtain a loan. The Master found that the Arbitration Agreement and Award provides that at the time of distribution of the sales proceeds from the sale real estate that Appellant is to reimburse Respondent all sums paid by Respondent to purchase said Ford Explorer, and that the Respondent is to sign over the Title to the Ford Explorer to the Appellant. The Master found that Respondent had made all the payments (*down payment and loan payments*) associated with the purchase the Ford Explorer vehicle through Respondent's testimony, a reading of Arbitration Agreement and Award, and, the submission of Respondent's Exhibit 1 which includes the following: Title to Ford Explorer, a \$2,000.00 down payment check for Ford Explorer made by Ellen B. Sexton, the Checking Account History of Ellen B. Sexton Account #0000107395 showing monthly Automatic Transfer of Funds in the amount of \$293.78 beginning June 2006 and ending May 2011 for Ford Explorer, and Heritage Trust

Vehicle Loan Documentation regarding Ford Explorer. The Master found that Appellant is required to reimburse the Respondent the funds she expended for the purchase of said Ford Explorer due to his predominant exclusive use and possession of said vehicle since June 2006, and due to the wear and tear on the vehicle that Appellant has put on said vehicle which is now located on the west coast of the United States of America; and, that Respondent is to sign over the Title to the Ford Explorer to the Appellant. The Master found that the total amount paid by Respondent towards the purchase of the Ford Explorer vehicle totals \$19,626.80 (i.e., \$2000.00 down payment and \$17,626.80 in loan payments). That the sum of \$72,000.00 from the sale of the Furman Home is being held in Escrow by Attorney David A. Collins. The Master found that 40% of \$72,000.00 equals \$28,800.00 (Sexton's share), and, 60% of \$72,000.00 equals 43,200.00 (English's share). The Master found that the Appellant English had entered into a fee agreement with Attorney(s) and that his former attorneys should be paid out of the funds from the sale of the Furman Home which were remaining after Respondent Sexton received the sum of \$19,626.80 from Appellant's share of said proceeds. The subject Order of the Master in Equity was issued and Appellant English file this appeal.

STANDARD OF REVIEW

"In an action at law, when a case is tried without a jury, the trial court's findings of fact will be upheld on appeal when they are reasonably supported by the evidence . . . [T]he trial court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or unless it clearly appears the findings were influenced or controlled by an error of law."); Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 631 S.E.2d 252, (2006). In an action at law, factual findings will not be disturbed unless there is no evidence

which reasonably supports the finding. This is true whether the case is tried to a jury or to the trial judge. In action in equity, tried first by a master, the factual findings will not be disturbed unless the finding lacks any evidentiary support or is against the clear preponderance of the evidence. Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)

ARGUMENT

I. THE ORDER OF MASTER IN EQUITY REGARDING THE TRANSFER OF THE FORD EXPLORER AND DISTRIBUTION OF FUNDS TO RESPONDENT IS PROPER PURSUANT TO THE ARBITRATION ORDER, AND, IS FAIR AND EQUITTABLE UNDER THE CIRCUMSTANCES OF THIS CASE.

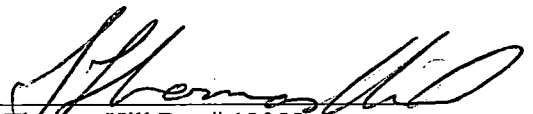
The Master's Order is based on the evidence and facts presented by both parties and on his reading of Arbitration Agreement,. The Master's decision should not be ignored or reversed by the Court of Appeals. As a matter of law, the Arbitration Order was interpreted and enforced. Moreover, there is an equitable consideration which is ever present in this case and that is, "would it be fair to Respondent Sexton to receive a worn out old Ford Explorer which has been driven and possessed exclusively by Appellant English for years, after having paid for the vehicle. It is ridiculous to believe that Sexton would have wanted the Ford Explorer after all the wear and tear over the years and mileage that the Appellant had put on said vehicle. Of course, when the Arbitration Agreement was executed Respondent expected that she would be reimbursed for her outlay of purchase money for said vehicle. The evidence supports the Master's findings that the Arbitration Agreement read that Respondent Sexton would be reimbursed for the purchase of the Ford Explorer out Appellant's share of the sales proceeds from the Furman home.

II. THE ATTORNEY'S FEE DISPUTE AND RESOLUTION IS SECONDARY AND SUBORDINATE TO THE DISTRIBUTION OF FUNDS TO SEXTON PURSUANT TO THE ARBITRATION ORDER.

The Respondent Sexton is not opposed to the awarding of attorney's fees to the former legal counselor's for Appellant as long as said award is secondary and subordinate to the distribution of funds to Sexton for her share of the Furman home sale proceeds and for the subject Ford Explorer vehicle. In no event would it be proper for the Appellant's responsibility to pay his attorney infringe upon the distributions to which Respondent is entitled. In other words, the distributions to Respondent come off the top and any funds remaining may then be shared or divided by and between Attorneys Karen Marie Dejong and John Evander White

CONCLUSION

The distribution of funds to Respondent Sexton and transfer of the Ford Explorer to Appellant is just and proper pursuant to the Order of Record and the circumstances of this case. Any award of attorney's fees should in no way affect the distribution of funds to the Respondent.


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May 21, 2015

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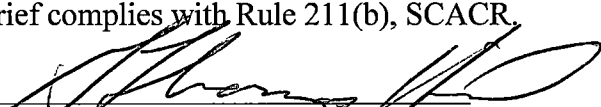
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 211(b), SCACR.


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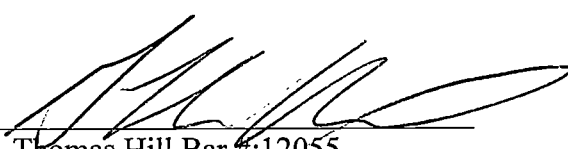
I HEREBY CERTIFY that I have served the FINAL BRIEF OF RESPONDENT on Appellant, and on the following individuals by depositing copies of the same in the United States Mail, postage prepaid, addressed to the Counsel of Record, below:

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