THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-In-Equity and
Special Circuit Court Judge

RECEIVED
MAY 28 2015
SC Court of Appeals

Appellate Case No. 2015-001041
Lower Court Case No. 2014CP0701811

Daniel T. Bryan, Lisa D. Bryan and Beach Deli Enterprises d/b/a Munchies, Plaintiffs

Of Whom Daniel T. Bryan and Lisa D. Bryan are Appellants

v.

Dr. Marix Snijder, USA Limited Partnership V, L. P., Merrelyn Rogers, Renita Bryant and Dimara Atlanta Investment Corp.and Superior Heating and Air, Inc. are Respondents

---

INITIAL BRIEF OF APPELLANTS

Lisa D. Bryan
Daniel T. Bryan
4 Royal Crest Drive
Hilton Head, SC 29928
843-368-7433
Pro Se, Appellants

Jeffery T. Stover
P.O. Box 22129
Charleston, SC 29412
843-576-2827
843-577-3369 (fax)
jstover@turnerpadget.com
Attorney for Respondent

TABLE OF CONTENTS

1. Because there was no order from the November 7, 2014 Motions Hearing that went before the Honorable Judge Maite Murphy, a continuance of the Motions Hearing to Dismiss Appellants from the case should have been granted to allow Appellants their rights under the fourth and fourteenth Amendment of the United States Constitution and their rights under South Carolina Law of Rules of Civil Procedure Rule 59 (e) and Rule 203 to file a motion for reconsideration and appeal Judge Maite Murphys' rulings. .

2. Because the Appellants received the order from the November 7, 2014 Motions hearing from Judge Maite Murphy from the Respondents Attorney at the March 18th, 2015 Motions Hearing in the presents of the Honorable Judge Marvin Dukes III and the known desire of Appellants to file a motion for reconsideration and / or appeal the rulings contained in the order, the Honorable Judge Marvin Dukes III should not have held the March 18, 2015 hearing on Respondents Motion to Dismiss and Motion for Judgement on the Pleadings. At a minimum a ruling should not have been made until the Appellants had an opportunity to file their Motions.

3. Because the Respondents Motion to Dismiss under SCRCP Rule 12 (a) (6) was filed prior to the Respondents Motion for Judgement on the Pleadings SCRCP 12 (c), Judge Dukes the Motion to Dismiss should have been converted to one of Summary Judgement under SCRCP 56. Since the case was in the middle of discovery, the Motion should have been denied.

4. Because the Respondents filed a second motion for Judgment on the Pleadings to accomplish the same thing as the first Motion to Dismiss, the second Motion should not have been heard. The goal of Respondents was to have Appellants removed from this case. The Motion for Judgement on the Pleading was filed long after the Motion to Dismiss and should not have been heard.

5. Because Appellants are Pro Se Litigants, the Honorable Judge Marvin Dukes III should have allowed Appellants to amend their complaint to include a meritorious claim of Defamation.

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. Did the Honorable Judge Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge for Beaufort County, err when he denied Appellants request for a continuance of the March 18th 2015 Motions to Dismiss and Motion for Judgment on the Pleading Hearing to remove Appellants as Plaintiffs in their case as the Order from the previous Motions Hearing heard by The Honorable Judge Maite Murphy on November 7, 2014 had not yet been received extinguishing the Appellants Fourth and Fourteenth Amendment Constitutional Rights of Due Process and SCRCP Rule 59 (e) and SCRCP Rule 203 to file a Motion for Reconsideration and Appeal Judge Maite Murphys' November 7, 2014 Motions Hearing Order?
2. Did the Honorable Judge Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge for Beaufort County, err in ruling on the Respondents Motion to Dismiss and Motion for Judgment on the Pleadings dismissing Appellants as Plaintiffs in their case denying Appellants their right to pursue a Motion for Reconsideration and Appeal of the order of Judge Maite Murphy from the November 7, 2014 Motions Hearing pursuant to SCRCP Rule 59 (e) and SCRCP Rule 203 respectively and ultimately denying Appellants their rights of due process in accordance to the Fourth and Fourteenth Amendment to United States Constitution as the Honorable Judge Maite Murphy's Order was received by Appellant and entered by the court on March 18th, 2015, the same day as the Motion to Dismiss Hearing?

3. Did the Honorable Judge Marvin H. Dukes err in hearing both the Respondents Motion to Dismiss under Rule 12 (a)(6) of the South Carolina Rules of Civil Procedure filed on October 17, 2014 and the Respondents Motion for Judgment on the Pleadings under Rule 12 (c) of the South Carolina Rules of Civil Procedure which was filed on November 14, 2014 as consolidating both motions is not allowed under SCRCP 12(g)?
4. Did the Honorable Judge Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge for Beaufort County, err in not converting the Respondents FIRST Motion to Dismiss that was filed under SC Rule 12(b)(6) on October 17, 2014 to one of a Motion for Summary Judgment therefore denying the Motion as it was filed after the Respondents had submitted their answer and the case was in the midst of discovery?
5. Did the Honorable Judge Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge for Beaufort County, err in applying the standard of law for a Judgment on the Pleadings under Rule 12(c), of the South Carolina Rules of Civil Procedure instead of the standard of law for the motion to Dismiss under Rule 12 (a)(6) which was filed FIRST on October 17, 2014 in his ruling on March 18, 2015 as the Motion for Judgment on the Pleadings filed after the Motion to Dismiss which ultimately dismissed Appellants as Plaintiffs in their case?
6. Did the Honorable Judge Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge for Beaufort County, err in not construing Appellants pleading liberally to develop a meritorious claim by allowing Appellants to amend their complaint to include a defamation cause of action?

STATEMENT OF THE CASE

Appellants filed a complaint against Respondents on July 29, 2014 stating that Respondents undertook a series of actions as outlined in Appellants complaint that breached the lease agreement and harmed Beach Deli Enterprises, Inc. dba Munchies' business operations who is a Plaintiff in this case. The Appellants claim that they were personally discriminated and continually harassed by Respondents. There was a motions hearing on November 7, 2014 where the Honorable Judge Maite Murphy heard and decided five motions. The Respondents filed a Motion to Dismiss on October 23, 2014 and a Motion for Judgement on the Pleadings on November 12, 2014 both to have Appellants dismissed as Plaintiffs. These motions were not heard by Judge Maite Murphy as they were not on the November 7, 2014 Roster. On March 18, 2015, Judge Marvin Dukes III was to hear the two remaining motions. Judge Marvin Dukes III was made aware that the order from the hearing before the Honorable Judge Maite Murphy from the November 7 2014 Motions Hearing had not yet been generated nor filed and the Appellants were planning on filing a motion to reconsider two of the decisions from the November 7, 2014 hearing. The Appellants requested a continuance of the March 18, 2015 hearing on the remaining motions until Judge Maite Murphys order was received and Appellants could file their Motion to Reconsider and Appeal.. On March 12, 2015 there was a continuance conference where Appellants argued that a decision on the last two remaining motions to eliminated the Appellants as Plaintiffs in their case would deprive them of their rights to due process and again asked that they have an opportunity to file a motion for reconsideration and / or appeal the decision of Judge Maite Murphy once the order is received. The Respondents opposed the request and the request for a continuance was denied.

The motions hearing took place on March 18, 2015. The Appellants had submitted written responses to the two remaining motions stating that the motion to dismiss was to be converted into one for summary judgement and dismissed as the case was in the middle of discovery. Judge Marvin Dukes III stated at the hearing that he read all document submitted but proceeded to Grant Respondents Motion for Judgement on the Pleadings as to the Appellants being dismissed as Plaintiffs in their case in his order dated April 23, 2015. At the March 18, 2015 Motions Hearing it was considered that the Appellants cause of action might be defamation but since there was no mention of defamation in the Appellants complaint, the defamation issue was dismissed without merit. The Appellants asked that the court allow them as Pro Se Litigants time to development of a potentially meritorious claim. Their request was denied. The Notice of Appeal was sent May 8, 2015.

FACTS

1. Appellants filed a complaint against Respondents on July 29, 2014 stating that Respondents undertook a series of actions as outlined in their complaint that breached the lease agreement and harmed Beach Deli Enterprises, Inc. dba Munchies' business operations who is a Plaintiff in this case. The Appellants additionally claim that they were personally discriminated and continually harassed by Respondents. Those allegations are set forth as the basis for three causes of action: (1) Breach of Contract/Breach of the Implied Covenant of Good Faith and Fair Dealing, (2) Breach of Quiet Enjoyment and (3) Discrimination. The Breach of Contract cause of action focuses on lost business of Beach Deli Enterprises, Inc. dba Munchies allegedly suffered as a result of Respondents refusal to allow the restaurant to install a small restaurant hood in their current kitchen to enable them to better service their customers

as there are eleven years remaining on their lease. The Breach of Quiet Enjoyment cause of action seeks damages from the Respondents failure to provide certain services under the lease. The Discrimination cause of action claims that Defendants have unfairly treated Beach Deli Enterprises, Inc. dba Munchies differently than other businesses and owners located in Main Street Village, Hilton Head Island, SC. Appellants claim states a second component to this case where they were personally discriminated and continually harassed by Defendants. (Complaint pg 1-24)

2. On September 3, 2014, Respondents provided an answer and counterclaims. The counterclaims contained threats that if this case was not rescinded, Appellants and Plaintiff Beach Deli Enterprises, Inc d/b/a Munchies would be evicted from Main Street Village. (Respondents Answer pgs 10-11)
3. On September 30, 2014 Lisa D. Bryan, Daniel T. Bryan and Beach Deli Enterprises, Inc. d/b/a Munchies individually submitted answers to the Respondents counterclaims as Daniel T. Bryan, Appellant did not receive a timely answer by the Respondents to the Complaint. (Appellant Answers – entire document)
4. On October 23, 2014 Respondents filed a Motion to Dismiss pursuant to SCRC Rule 12 (a) of the South Carolina Rules of Civil Procedure. (Respondents Motion)
5. On November 7, 2014, the Honorable Judge Maite Murphy heard the following pending Motions in this case: (1) Appellants Daniel T. Bryan and Lisa D. Bryan's Motion for Entry of Default against Defendants' Dr. Marnix Snijder, USA Limited V, L.P., Merrelyn Rogers, Renita Bryant and Dimara Atlanta Investment Corp; (2) Appellants Motion for Default Judgment against the Main Street Village Defendants; (3) Appellants Motion to Dismiss the Answer and Counterclaims of the Main Street

Village Defendants; (4) Appellants Motion to Compel Discovery Responses; (5) Appellants Motion to Compel Attendance at Depositions; and (5) Main Street Village Defendants' Motion for a Protective Order.

The Respondents Motion to Dismiss that was not heard at the November 7, 2014 Motions Hearing as the Motion was not on the Roster.

6. On November 4th, 2014, Appellants filed a response to the Respondents Motion stating that the Motion should be converted to one of Summary Judgement under SC Rule 56 because the Motion was filed after the answer was submitted. Appellants stated that the Motion should be dismissed as the case was in the midst of discovery. (Response)
7. On November 12, 2014 Respondents filed Motion for Judgment on the Pleading under SCRCP Rule 12 (c). (Respondents Motion)
8. On December 11, 2014 an email was sent to the Honorable Judge Maite Murphy from Jeffery Stover, Attorney for Respondents with proposed orders for the Honorable Judge Maite Murphy to review and approval.
9. On December. 15, 2015 Appellants filed a response to the Respondents Motion for Judgment on the Pleading. The original Motion to Dismiss was not withdrawn by Respondents having two motions to dismiss Plaintiffs from this case on the Judicial Roster. (Appellants Response to Motions)
10. On February 22, 2014 Appellants received notice that a Motions Hearing was to take place before the Honorable Judge Marvin H. Dukes III for all outstanding motions which included the six that had already been heard by the Honorable Judge Maite Murphy. (Notice of Hearing from Respondents)

11. On February 23, 2015, Appellant Lisa Bryan called the Honorable Judge Maite Murphy's office to follow up on the order and was told that there was no order in the file and that one currently did not exist.

12. On February 23, 2015 Appellants filed a letter to the The Honorable Gerri Ann Roseneau the court and Hand Delivered same letter to Judge Marvin Dukes III stating that the Court had already heard the following motions and as of February 23, 2015 no order has been received by Judge Maite Murphy on her rulings from:

a. Motion to Dismiss – Superior Heating and Air (former Defendant)
b. Motion for Entry of Default Judgment – Daniel / Lisa Bryan (Appellants)
c. Motion to Dismiss Counterclaims – Daniel / Lisa Bryan (Appellants)
d. Motion to Compel Attendance at Depositions and Answer Interrogatories – Daniel / Lisa Bryan (Appellants)
e. Motion to Compel – Daniel / Lisa Bryan (Appellants)
f. Motion for Protective Order – Marnix Snijder (Respondents) (Letter)

13. On February 23, 2015 Heather McLeod, Judicial Assistant to Judge Marvin Dukes III, confirmed with all parties that the November 7, 2014 Motions hearing before the Honorable Judge Maite Murphy did take place and it was determined that even though there was no order, the two remaining motions to dismiss and motion for judgement on the pleadings were the only two outstanding motions and those two motions would be heard the only ones addressed on March 18, 2015 before the Honorable Judge Marvin Dukes III.

14. On March 2, 2015, Appellant Lisa D. Bryan filed a Request to Continue the Motions hearing on March 18, 2015 to the Honorable Judge Marvin Dukes III and all parties to

this case stating that deciding on the two outstanding motions would deprive Appellants of their right to file a Motion for Reconsideration and / or an Appeal from the Honorable Judge Maite Murphy's rulings pursuant to SC Rule 59 (e) and SC Rule 203 respectively denying them due process and their constitutional rights to file an appeal.(Continuance)

15. On March 12, 2015 a conference Hearing on Appellants request was heard where Appellants argued that to hold the Motions hearing without the order from November 7, 2014 Motions Hearing that went before the Honorable Judge Maite Murphy would be premature. Without an order from the previous hearing, the Appellants would be deprived of their right to file a Motion for Reconsideration and an Appeal from the Honorable Judge Maite Murphy's rulings pursuant to SC Rule 59 (e) and SC Rule 203 respectively. Appellants argued that it is through no fault of their own that an order has not been filed or received. A proposed order was submitted on December 11, 2014 waiting on the final written and signed order from the courts. Appellants could not exercise their rights to file a Motion for Reconsideration or even Appeal one or more of the decisions the Honorable Judge Maite Murphy made on the six motions she heard back on November 7, 2014th as there is NO ENTRY OF AN ORDER or WRITTEN NOTICE OF THE ENTRY OF AN ORDER.

The Respondents did not agree to a continuance of the motions hearing scheduled for March 18, 2015 and the Plaintiffs request was denied by the Honorable Judge Marvin Dukes III. (Request for Continuance – All Pages)

16. On March 18, 2015, the Honorable Judge Marvin H. Dukes III heard the Respondents Motion to Dismiss under SC Rule 12 (a)(6) and Motion for Judgment on the Pleadings under SC Rule 12 (c). The Honorable Judge Marvin Dukes III stated

that he had read the entire court file including the Appellants Response to the Respondents Motions to Dismiss and Motion for Judgment on the Pleadings. After hearing arguments from both the Respondent and Appellants, the Honorable Judge Marvin Dukes III GRANTED Respondents motions as to the Appellants and the Appellants were dismissed as plaintiffs from this action. (Judge Duke III Order)

17. On April 24, 2015, the ORDER was filed from the The Honorable Judge Marvin H. Dukes III's ruling of which his focus was on the later filed Motion for Judgment on the Pleadings under SCRC Rule 12 (c) and not on the Motion to Dismiss under SCRC 12 (b)(6). The standard Judge Marvin Dukes III used is as follows:

"Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. ... On review of the motion, the court may not consider matters outside the pleadings. ... A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. ... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. ... Furthermore, 'a judgment on the pleadings is considered to be a drastic procedure by our courts.'" Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000) (internal citations omitted).

Never was the SCRCP Rules used for the Motion to Dismiss under Rule 12(b)(6) even though it had been filed almost a month after the Respondents Motion to Dismiss which dismissed the Appellants as Plaintiffs in their case. (Judge Dukes Order – All pages)

ARGUMENTS

1. ***Because there was no order from the November 7, 2014 Motions Hearing that went before the Honorable Judge Maite Murphy, a continuance of the Motions Hearing to Dismiss Appellants from the case should have been granted to allow Appellants their rights under the fourth and fourteenth Amendment of the United States Constitution and their rights under South Carolina Law of Rules of Civil Procedure Rule 59 (e) and Rule 203 to file a motion for reconsideration and appeal Judge Maite Murphys' rulings. .***

The Appellants have the right to file and Motion for Reconsideration and Appeal if they feel necessary the decisions that were made by the Honorable Judge Maite Muphy at the November 7, 2014 Motions hearing.

The South Carolina Rules of Civil Procedure 59 (e) Motion to Alter or Amend a Judgment clearly states:

> ***A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.***

South Carolina Rules of Civil Procedure 203: Notice of Appeal which clearly states:

> ***B(1)Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59,***

SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

A continuance was required in order to allow the Appellants to exercise their rights to file a Motion for Reconsideration or Appeal one or more of the decisions the Honorable Judge Maite Murphy made on the six motions she heard back on November 7, 2014th once an Order was received. As a matter of law, the two motions filed by Defendants should have been continued until a time where the Plaintiffs have received their order from the Honorable Judge Maite Murphy from the November 7th, 2014 hearing and the Appellants have had the opportunity to exercise their rights under the law to file their motions for reconsideration and file their appeal once their motions for reconsideration are heard.

The Appellants had met the burden of SCRCP Rule 40 by providing good and sufficient cause for the continuance. Clearly, it was an abuse of discretion by denying the Appellants request for continuance which has harmed Appellants.

2. ***Because the Appellants received the order from the November 7, 2014 Motions hearing from Judge Maite Murphy from the Respondents Attorney at the March 18th, 2015 Motions Hearing in the presents of the Honorable Judge Marvin Dukes III and the known desire of Appellants to file a motion for reconsideration and / or appeal the rulings contained in the order, the Honorable Judge Marvin Dukes III should not have held the March 18, 2015 hearing on Respondents Motion to Dismiss and Motion for Judgement on the Pleadings. At a minimum a ruling should not have been made until the Appellants had an opportunity to file their Motions.***

The Appellants should have been given the time required by the SCRCP to file their Motion for Reconsideration and / or Appeal of the rulings from the November 7, 2014 Motions Hearing that went before the Honorable Judge Maite Murphy. All parties knew the Appellants desire to file their Motion for Reconsideration and/ or APpeal. The law clearly states that under the SCRCP Rule 59 (e) Motion to Alter or Amend a Judgment clearly states:

> ***A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.***

SCRCP Rule 203: Notice of Appeal which clearly states:

> ***B(1)Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.***

Appellants could not exercise their rights to file a Motion for Reconsideration or even Appeal one or more of the decisions the Honorable Judge Maite Murphy made on the six motions she heard back on November 7, 2014th as there is NO ENTRY OF AN ORDER

or WRITTEN NOTICE OF THE ENTRY OF AN ORDER until the day of the March 18th, 2015 Motions Hearing before the Honorable Judge Marvin Dukes III. Judge Dukes abused his discretion by denying Appellants their rights and ultimately harmed Appellants.

3. ***Because the Respondents Motion to Dismiss under SCRCP Rule 12 (a) (6) was filed prior to the Respondents Motion for Judgement on the Pleadings SCRCP 12 (c), Judge Dukes the Motion to Dismiss should have been converted to one of Summary Judgement under SCRCP 56. Since the case was in the middle of discovery, the Motion should have been denied.***

   The Respondents motion to dismiss pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure was filed on October 23, 2014. The SC Rule 12 (b)(6) specifically states:

   that "a motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

On September 3, 2014, Respondents submitted their response and counterclaim to Appellants Complaint to Lisa Bryan. Since the motion to dismiss was sent to Appellant under Rule 12(b)(6) over a month and one-half after the complaint was answered, the motion should be treated as one for summary judgment as provided in Rule 56.

A 12(b)(6) motion is proper before the filing of an answer. Tr. of the Univ. of Pa. v. Mayflower Transit, No. 97-1111, 1997 WL 598001, at *1 (E.D. Pa. Sept. 16, 1997)."Since the Rule 12(c) motion serves the same function as the untimely motion under Rule 12(b)(6), numerous courts faced with 'a misnamed motion to dismiss have chosen to overlook the semantic faux pas and restyled the motion as a Rule 12(c) motion'. . . ."Id. at *2, quoting Delta Truck & Tractor, Inc. v. Navistar Int'l. Transp. Corp., 833 F.Supp. 587, 588 (W.D. La. 1993).

Discovery ***has not*** been concluded and is ***"incomplete"*** in this case. To date, the Appellants have deposed three key witnesses Anita Cheap, David Miller and Shawn Galipeau from Defendant Superior Heating and Air, Inc.. Additionally, Appellants have received documents from Defendant Superior Heating and Air, Inc. and emails from Respondents who have submitted their response to Appellants First Set of Interrogatories and Appellants First Requests for Production. Depositions have been taken of Respondents Merrelyn Rogers and Renita Bryant on January 13, 2015. Deposition of Dr. Marnix Snijder is scheduled for October 2015 when Dr. Marnix Snijder returns to the United States. Appellants still planned on deposing Leah Ortega, Katie Thompson and David Staley, all of which will be completed at a later date. As this honorable court can see, we are in the midst of discovery in this case.

Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). This means, among other things, that summary judgment must not be granted until the ***opposing party has had a full and fair opportunity to complete discovery.*** Id. Furthermore, a trial court should not grant summary judgment when the matter is not ripe for such consideration, such as when ***discovery has not yet been completed.*** Driscoll Constr. Co. v. DOT, 371 N.J. Super. 304, 317 (App. Div. 2004). As this court can see, this case is in the midst of discovery therefore Summary Judgment is not proper.

Additionally, Summary judgment is "only" proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

If triable issues exist, those issues must be submitted to the jury. Young v. S.C. Dep't of Corr., 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). Even where no dispute as to evidentiary facts exists, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002). Moreover, summary judgment is a drastic remedy that should be cautiously invoked to ensure no person is improperly deprived of a

trial of disputed factual issues. Lanham v. Blue Cross & Blue Shield of S.C., 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002)

4. ***Because the Respondents filed a second motion for Judgment on the Pleadings to accomplish the same thing as the first Motion to Dismiss, the second Motion should not have been heard. The goal of Respondents was to have Appellants removed from this case. The Motion for Judgement on the Pleading was filed long after the Motion to Dismiss and should not have been heard.***

In his order, the Honorable Judge Marvin Dukes III used the standard of review for the SECOND Motion that was filed by Respondents and did not address the FIRST Motion that was filed by Respondents.- Their Motion to Dismiss. In his Order, the Honorable Judge Marvin Dukes III stated:

> ***"Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. ... On review of the motion, the court may not consider matters outside the pleadings. ... A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. ... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. ... Furthermore, 'a judgment on the pleadings is considered to be a drastic procedure by our courts.'" Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000) (internal citations omitted).***

The Motion to Dismiss should have been the Motion that was heard and decided at the Motions Hearing on March 18, 215. The Motion to Dismiss should have been converted to one of Summary Judgement under SCRCP Rule 56 and dismissed as this case was in the midst of discovery. The Motion for Judgement on the Pleadings should never have been heard.

> ***Federal Rules 12(g)(2) Joining Motions :*****Limitation on Further Motions.** ***Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.***

The Respondents Motion for Judgment on the Pleadings should never have been heard or ruled on as in Federal Rule 12 (g)(2): Joining Motions which limits the filing of similar motions.

5. ***Because Appellants are Pro Se Litigants, the Honorable Judge Marvin Dukes III should have allowed Appellants to amend their complaint to include a meritorious claim of Defamation.***

It was established during the March 18th, 2015 Motions hearing that the Appellants claim was one of defamation. Since the Appellants did not have a claim of defamation in their complaint, the request of Appellants to allow them to add defamation as a claim was dismissed. The court is required to construe such pro se pleadings liberally to allow for the development of a potentially meritorious claim Haines v Kerner, 404 US 519 92 s. Ct. 594, 30 L.ED.2d 652 (1972) Estelle v Gamble, 429 US 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) Loe v. Armistead, 582 F.2d 1291 (4th Circuit 1978) Gordon v Leeke, 574 f.2d 1147 (4th Cir. 1978) Pro Se Complaints

are held to a less stringent standard than those drafted by attorneys. Hughes v Rowe, 449, US 5, 101 S.Ct.173,66 L.Ed 2d 163 (1980)

A Pro Se Complaint Should not be dismissed summarily unless "it appears beyond. doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Quoting from Conley v Gibson, 355 US 41, 45-46 78 S Ct 99 102 2 L Ed 2d 80 (1957)

The Appellants should have been able to amend their complaint to add Defamation as a meritorious claim.

Conclusion

Judge Marvin Dukes III should not have heard Respondents two outstanding motions on March 18, 2015 until the order from the previous motions hearing where Judge Maite Murphy presided was received. The hearing date should have been continued until a time where Appellants had the opportunity to exercise their Constitutional Rights to Due Process under the law to file a motion for reconsideration and appeal Judge Maite Murphys rulings on November 7, 2014 even if he did personally feel that there were no issues that were appealable from that hearing.

To exasperate the wrong of not continuing the hearing, the law provided by Appellants in their memorandum of opposition to the motions to dismiss was ignored. The Appellants Motion to Dismiss was filed after their answer. The motion should have been converted into a motion for Summary Judgement under Rule 56 and denied as even the Respondents Council would agree that he did not even want to schedule the required ADR Session until October as this case was in the midst of discovery.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-In-Equity

Appellate Case No. 2015-001041
Lower Court Case No. 2014CP0701811

Daniel T. Bryan, Lisa D. Bryan and Beach Deli Enterprises d/b/a Munchies, Plaintiffs

Of Whom Daniel T. Bryan and Lisa D. Bryan are Appellants

v.

Dr. Marix Snijder, USA Limited Partnership V, L. P., Merrelyn Rogers, Renita Bryant, Dimara Atlanta Investment Corp. and Superior Heating and Air, Inc. Respondents

RECEIVED
MAY 28 2015
SC Court of Appeals

PROOF OF SERVICE
APPELANTS INITIAL BRIEF

I certify that I have served the Appellant's Initial Brief on Dr. Marix Snijder, USA Limited Partnership V, L. P., Merrelyn Rogers, Renita Bryant, Dimara Atlanta Investment Corp. Respondents and Beach Deli Enterprises Inc. d/b/a Munchies, Plaintiff by depositing a copy of it in the United States Mail, postage prepaid, on May 27, 2015, addressed to

Jeffery T. Stover
Attorney for the Defendants / Respondents
P.O. Box 22129
Charleston, SC 29412
843-576-2827
843-577-3369 (fax)
jstover@turnerpadget.com
Attorneys for Respondent

Mr. Eric M. Staggs, Esq.
Laughlin and Bowen Law Firm
92A Main Street
Hilton Head, SC 29926
Attorney for Plaintiff Beach Deli Enterprises, Inc.

May 27, 2015

Lisa D. Bryan, Pro Se

Daniel T. Bryan, Pro Se