THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In the Court of Common Pleas

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SC Court of Appeals

Edgar W. Dickson, Presiding Judge

Appellate Case No. 2014-001154

Lydia Miller and Doris Knight..Plaintiffs,

Of Whom Lydia Miller is the .... Respondent,

v.

Willie Fields, Paula White, and The Refurb Center, Inc.......................................Defendants,

Of Whom Willie Fields..Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

A. DID THE TRIAL COURT ERR IN DETERMINING THAT THE RESPONDENT HAD STANDING TO PURSUE THIS ACTION AGAINST APPELLANT?

B. DID THE TRIAL COURT ERR IN AWARDING THE RESPONDENT DAMAGES FOR BREACH OF AN ORAL CONTRACT TO HAVE THE HOME READY FOR OCCUPANCY IN AUGUST OF 2011?

C. DID THE TRIAL COURT ERR IN FINDING AND RULING THAT RESPONDENT SUFFERED DAMAGES AS THE RESULT OF AN ALLEGED BREACH OF CONTRACT?

D. DID THE TRIAL COURT ERR IN FAILING TO TAKE THE APPELLANT'S DAMAGES INTO CONSIDERATION IN HIS CALCULATION OF DAMAGES?

E. DID THE TRIAL COURT ERR IN FAILING TO AWARD APPELLANT MONEY DAMAGES PURSUANT TO HIS COUNTERCLAIM AGAINST RESPONDENT?

STATEMENT OF THE CASE

Respondent Lydia Miller commenced this action on or about March 30, 2012, against Appellant Willie Fields, Paula White and the ReFurb Center, Inc., alleging causes of action for Breach of Contract, Detrimental Reliance and Conversion. (R. p. 5). The Appellant answered and counterclaimed for Breach of Contract. (R. p. 11). Respondent replied to the Appellant's Counterclaim. (R. p. 15).

The parties then engaged in discovery. The case was unsuccessfully mediated. (R. p. 19, ll. 6-10). It came to trial before the Honorable Edgar Dickson, sitting Non-jury, in Lexington County on January 6, 2014. (R. p. 16). At trial, Defendant Paula White was dismissed. (R. p. 54). Further, the Appellant stipulated during trial that Willie Fields, and not Defendant The ReFurb Center, Inc., was the real party in interest in this matter. (R. p. 54, ll. 1-10).

On or about April 28, 2014, Judge Dickson entered his Order. Judge Dickson found and ruled as a matter of law that a contract existed between the parties and further that the Respondent was entitled to an award of Twelve Thousand and no/100 ($12,000.00) for breach of contract. (R. p. 1). Judge Dickson determined that the Appellant represented to Respondent that the mobile home would be in a livable condition "...upon the arrival of Plaintiff Miller [Respondent] in August of 2011." (R. p. 1). Judge Dickson found that the mobile home was not in a livable condition upon arrival of the Plaintiff/Respondent Miller in August of 2011. (R. p. 1). Judge Dickson further ruled that "...Plaintiff Miller [Respondent] did not receive from Defendant Fields [Appellant] what was bargained in return for the given consideration by Plaintiff Miller [Respondent] and that the consideration should be returned to Plaintiff Miller

[Respondent]." (R. p. 1). The Court found and ruled as a matter of law that no other damages were proved by Respondent. (R. p. 1). Defendant White was dismissed from this action. (R. p. 1). The claims of Plaintiff Knight were also dismissed. (R. p. 1).

Appellant received written notice of Judge Dickson's Order on May 3, 2014. (R. p. 181). This appeal timely followed. (R. pp. 173, 181).

STATEMENT OF THE FACTS

Appellant Willie Fields is a General Contractor engaged in the business of purchasing and refurbishing used mobile homes and selling them. (R. p. 20, ll. 13-15; p. 58, ll. 23-24). His business is located at Edmond Road in Lexington County, South Carolina. (R. p. 22, ll. 18-25).

In February or March of 2011, the Respondent Lydia Miller contacted him regarding the potential purchase of a mobile home. (R. p. 58, ll. 23-24; p. 82, ll. 1-25). Ms. Miller, a South Carolina native, was living in Kentucky at the time. (R. p. 19, l. 24 - p. 20, l. 8). She now lives in Tennessee. (R. p. 19, ll. 22-24).

Ms. Miller testified that she learned of Appellant's business after seeing an ad in the Carolina Trader. (R. p. 20, ll. 13-15). Respondent informed the Appellant and his employee Paula White that she was planning to move to South Carolina with her "mildly retarded" brother to be closer to family. (R. p. 20, ll. 2-8). She informed Appellant that she had an aunt in Lexington County who was going to allow her to place a mobile home on her property. (R. p. 82, ll. 9-12). Respondent's plan at that time was to purchase a mobile home, have it refurbished, and live next to her aunt in Gaston. (R. p. 20, ll. 18-20).

Respondent came down to South Carolina and met with Appellant's employees and later communicated with Appellant and his office staff by phone on numerous occasions. (R. p. 216, ll. 10-12, 14-16; p. 22, ll. 18-25). Initially the Appellant did not know what type of mobile home she wanted. (R. p. 59, ll. 9-25). She did not know if she needed a single wide or a double wide. She also wanted to purchase a mobile home with monthly payments that she could afford. (R. p. 82, ll. 9-25). Appellant found three potential mobile homes for the Respondent – a single wide and two double wides. (R. p. 59, ll. 21-24; p. 60, ll. 1-6; p. 82, ll. 9-25). Appellant worked up the prices on each one and sent that information to the Respondent, along with photographs. (R. p. 59, ll. 9-25). Respondent ultimately selected a 28 x 56 Southern Mobile Home. (R. p. 24, ll. 14-20; p. 60, ll. 1-7).

The mobile home selected by the Respondent was owned by a third party bank. (R. p. 61, ll. 9-17). Respondent sent the Appellant a down payment of Twelve Thousand and no/100 ($12,000.00) dollars. (R. p. 25, ll. 1-17). This check, dated May 27, 2011, was from her brother, Glen Tool, written on his account and signed by him and addressed to Willie Fields. (R. p. 43, ll. 5-15; p. 96). The down payment given to Appellant was to be used to purchase the mobile home from the bank. (R. p. 61, ll. 9-17). At the time Respondent made her down payment, the actual price of her mobile home was not known. (R. p. 43, ll. 16-22).

Appellant denied telling Respondent that the mobile home would be ready for occupancy in August of 2011. He testified at trial that he never gave Respondent a date that the mobile home would be ready. (R. p. 73; p. 74, ll. 20-23; p. 87, ll. 16-25). Respondent introduced no written documentation that Appellant agreed the home would

be ready within any certain period of time (because no such documentation exists). (R. p. 49, ll. 14-25; p. 50, l. 1). Respondent offered no testimony or proof that Appellant ever made any statements, representations, or promises as to when the mobile home would be ready. Respondent testified that it was her "understanding" that the mobile home would be ready in a "short" period of time, which she "understood" to be 30 to 60 days. (R. p. 27, ll. 1-23). When asked on direct if the Appellant ever gave her a definite delivery date, she testified:

> Not really. He just said, you know, it takes a little bit of time to move a home and set it up, and then they had to redo the insides, but the way he talked, you know, it would be within 30 to 60 days and it just never happened.

(R. p. 26, ll. 20-25; p. 27, l. 1). Respondent merely testified that it was her "understanding" that the mobile home would be ready in 30 to 60 days. (R. p. 27, ll. 2-13).

Appellant testified that normally he required a written contract prior to purchasing a mobile home from a third party and commencing any work on refurbishing it. However, due to the fact that Respondent lived in Kentucky, he and his company worked with Respondent to accommodate her. (R. p. 60, ll. 8-13; p. 82, ll. 21-25). In May, Appellant began sending Respondent copies of a written contract. (R. p. 60, ll. 8-24). Appellant did not sign any of these written contracts. (R. p. 60, ll. 8-24; p. 83, ll. 4-23).

After receiving the down payment, Appellant bought the mobile home selected by Respondent and moved it to the property in Gaston. (R. p. 61, l. 18 - p. 62, l. 5). It cost Appellant an additional Four Thousand ($4,000) dollars to do this. (R. p. 62, ll. 6-21). Between May and August, Appellant put decking around the home (between the bottom edge of the home and the ground). They paid a fee to connect to city water. They ripped

out carpet (at Respondent's request) and put in vinyl. They began painting. At this point Appellants had used up all of the Respondent's money and had a substantial part of their own invested in Respondent's mobile home. (R. p. 63, ll. 3-16; p. 82, ll. 9-25; p. 87, ll. 19-25; p. 171). Appellant testified that he ultimately stopped work on mobile home due to the fact that he had so much money invested in it and no written contract. (R. p. 78, ll. 6-11; p. 83, ll. 4-8). He testified he informed the Respondent he would complete the work once Respondent signed a written contract. He told Respondent he could prepare a room for her to live in until the work was done. Respondent told him this would not be necessary because she had a camper she could stay in. (R. p. 83, ll. 11-23).

In August, the Respondent unilaterally and without notice to Appellant travelled to South Carolina in a camper with her brother. (R. p. 28, ll. 3-5, 9-23; p. 63, ll. 17-21). The mobile home was still in an unfinished condition. (R. p. 29, ll. 24-25). Respondent introduced pictures at trial that she claimed represented the condition of the home. (R. p. 97).

Appellant met with the Respondent at the Gaston property. The mobile home was not finished. (R. p. 79, ll. 1-3). Appellant admitted at trial that there was still outstanding work to be done to it. Appellant went through the mobile home with the Respondent and prepared a "punch list" of the work remaining to be done to the home. (R. p. 30, l. 17 - p. 31, l. 10; p. 44, ll. 6-17). Appellant testified that he was willing to complete the work on the home. (R. p. 80, ll. 3-5).

Appellant again provided Respondent with a written contract. (R. p. 44, ll. 6-25; p. 169). The written document provided that all of the items on the punch list would be completed within thirty (30) days, on September 15th. (R. p. 46, ll. 18-25; p. 47, ll. 1-10;

p. 66, ll. 7-17). Pursuant to the written contract presented to Respondent, the total amount due and owing would be Forty-Five Thousand Five Hundred and no/100 ($45,500.00) dollars with her first payment being due on September 15, 2011. (R. p. 65, l. 15 - p. 66, l. 13).

Respondent remained in South Carolina for approximately two weeks. (R. p. 31, ll. 16-18). During that time she refused to sign the proposed contract. (R. p. 44, ll. 11-17; p. 66, ll. 18-25; p. 171). Appellant informed her that he could not do any additional work or incur any additional costs and expenses without a written contract in place. (R. p. 66, ll. 18-25; p. 78, ll. 6-11). Respondent decided to bring legal action against Appellant. (R. p. 39, ll. 14-22). The only testimony in the record that explains Respondent's change of mind is that Respondent had entered into a relationship and no longer desired to move to South Carolina. (R. p. 82, ll. 24-25). Appellant testified at trial that the Respondent never gave him the opportunity to complete the work in the home.

Appellant subsequently completed the work set forth on the punch list. (R. p. 80; ll. 13-20). He removed it from the Gaston property and sold it to a third party, Patricia Dent. (R. p. 80, ll. 13-20). Ms. Dent testified at trial that she was satisfied with the home at the time she purchased it. (R. p. 93, ll. 10-11).

STANDARD OF REVIEW

"An action for breach of contract seeking money damages is an action at law." *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.,* 343 S.C. 424, 430, 540 S.E.2d 113, 117 (Ct. App. 2000). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "The judge's findings are equivalent to a jury's findings in a law action." *Id.*

ARGUMENT

I. RESPONDENT LACKS STANDING TO PURSUE THIS ACTION AGAINST APPELLANT.

At the close of the Respondent's case, Appellant's counsel moved for a directed verdict on the grounds that any contract entered into in this case was entered into between Appellant and Glen Tool, who actually provided the down payment to purchase the mobile home. (R. p. 43, ll. 5-15; p. 55, ll. 11-25; p. 56, ll. 1-4; p. 96). The Trial Court denied this Motion. (R. p. 57, ll. 1-25). Respondent took no action to add Mr. Tool as a party to this action following the Trial Court's ruling.

The Trial Court's Order found and ruled as a matter of law that there was a contract between the parties and that Respondent Miller, "paid Twelve Thousand Dollars ($12,000.00) to [Appellant] Fields as a down payment towards the purchase of a mobile home." (R. p. 1, ¶ 2). The Court's Order concluded that the Respondent's damages arising out of the alleged breach was a return of the purchase price and that, "...and that the consideration should be returned to Plaintiff Miller [Respondent]." (R. p. 2, ¶ 5).

This is clearly erroneous as the Respondent testified at trial, and the evidence showed, that the money paid as a down payment was not hers. The check was written on an account of her brother, Glen Tool. (R. p. 43, ll. 5-15; p. 96). Pursuant to the Court's Order, the Respondent suffered no actual damages as the result of the alleged breach of the contract found by the Court in this case as the sole damage found by the Court as a result of this alleged breach was the purchase price paid by the Respondent's brother, who is not a party to this case, for the actual home.

The Respondent clearly lacked standing to bring this action. This is made clear by the Court's Order finding and ruling that the only damage arising out of the alleged breach was a return of the purchase price, which was not paid by Respondent. See, *Bank of America, N.A. v. Draper,* 405 S.C. 214, 746 S.E.2d 478 (S.C. App. 2013). The real party in interest, who had standing to commence and prosecute this case was Respondent's brother, Glen Tool, who wrote the check for the down payment. The Respondent lacked standing and the Trial Court erred in denying the Appellant's motion for a directed verdict. Further, the Trial Court's Order awarding a return of the purchase price to the Respondent is clearly erroneous as the money paid for the purchase price was not paid by Respondent, but instead was paid by her brother, Glen Tool. (R. p. 43, ll. 5-15; p. 96).

II. THE TRIAL COURT ERRED IN AWARDING RESPONDENT DAMAGES FOR BREACH OF CONTRACT WITH APPELLANT.

A. THE TRIAL COURT ERRED IN FINDING AND RULING AS A MATTER OF LAW THAT THE APPELLANT AGREED THE RESPONDENT'S MOBILE HOME WOULD BE READY FOR OCCUPANCY IN AUGUST.

The Trial Court erred in ruling that the parties had a contract agreement that the mobile home would be finished and ready for occupancy by August of 2011 and that the Appellant breached this contract.

It is fundamental that in order to prevail on a breach of contract claim under South Carolina law, a plaintiff bears the burden of establishing the existence and terms of the contract, defendant's breach of one or more of the contractual terms, and damages resulting from the breach. *Visco v. Aiken County, S.C.*, 974 F. Supp. 2d. 908 (D.S.C. 2013); *Southern Glass & Plastics Co., Inc. v. Kemper*, 732 S.E.2d 205 (S.C. Ct. App. 2012); *Consignment Sales, LLC v. Tucker Oil Co.*, 705 S.E.2d 73 (S.C. Ct. App. 2010); *Rabon v. State Finance Corporation,* 203 S.C.183, 26 S.E.2d 501 (1943). This is true for an alleged oral contract as well as a written one. *Baylor et al. v. Bath et al.,* 189 S.C. 269, 1 S.E.2d 139 (1938). A valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. *Patricia Grand Hotel, LLC v. MacGuire Enters.* 372 S.C. 634, 643 S.E.2d 692 (Ct. App. 2007); *Player v. Chandler,* 299 S.C. 101, 382 S.E.2d 891 (1989).

The Trial Court found and ruled as a matter of law that a valid contract existed between Respondent and Appellant. (R. p. 1, ¶ 1). The Court found and ruled that Appellant represented and agreed that the mobile home would be in a livable condition upon the arrival of Respondent in South Carolina in August of 2011. (R. p. 2, ¶ 3). The

Court further found and ruled that the Appellant breached this agreement or contract because the mobile home was not in a livable condition when the Respondent came to South Carolina in August and that she was entitled to a return of her down payment paid to Appellant. (R. p. 2, ¶¶ 4, 5).

The Court's findings of fact and conclusions of law are not supported by the evidence presented at trial. The Respondent failed to meet her burden of proof of establishing an oral contract with the Appellant for delivery of the mobile home by a certain date. Both parties agreed at trial that there was nothing in writing that the mobile home would be ready for occupancy in August. The Appellant testified that he never gave the Respondent a definite date that the mobile home would be ready. (R. p. 73, ll. 20-23; p. 74, ll. 2-16; p. 87, ll. 16-25). There was certainly no testimony from the Appellant that he made any promises to the Respondent as to the delivery date at the time she put down the down payment (this would have been impossible at that time because the home had not yet been purchased by Appellant or delivered to the Respondent's property). Appellant testified that he informed Respondent prior to August that he was stopping work on the home due to his large investment in the home and the fact that Respondent had refused to sign a written contract. (R. p. 74, ll. 2-16).

Respondent presented no evidence that the parties ever agreed at the time of the down payment or anytime after that the home would be ready for occupancy in August when she arrived. Respondent offered no testimony that Appellant promised her a completion date at the time she made her down payment to him. Respondent testified that the Appellant never gave her a definite date that the home would be ready. (R. p. 26, ll. 20-22). Rather, it was her "understanding," based on her conversations with the

Appellant that the home would be ready "shortly" which she "understood" to mean 30 to 60 days. (R. p. 26, l. 20 - p. 27, l. 23). The firmest date that the Appellant testified to as to a date was a conversation she claims she had with Appellant during the summer of 2011, months after her down payment to Appellant that the home would be ready was "probably about mid August." (R. p. 27, l. 24 - p. 28, l. 2). Respondent denies that this conversation ever occurred.

This evidence does not support the Court's conclusion that any contract or agreement between the Appellant and Respondent contained an agreement that the home would be ready for occupancy when the Respondent came down to South Carolina in August. Respondent failed to meet her burden of proof with respect to the contract. Further, the evidence in this case is clear that there never was any meeting of the minds between the parties as to when the mobile home would be ready. The Court's Order essentially adds this provision to the agreement or contract between the parties. This is not supported by the evidence presented at trial and is clearly impermissible under South Carolina Law. See, *Lewis v. Premium Investment Company,* 351 S.C. 167, 568 S.E.2d 361 (2002); *Gilstrap v. Culpepper,* 283 S.C. 83, 320 S.E.2d 445 (1984); *Brown v. Lewis,* 182 S.C. 9, 188 S.E. 182 (1936).

B. THE TRIAL COURT ERRED IN FINDING AND RULING THAT THE RESPONDENT WAS DAMAGED BY ANY ALLEGED BREACH OF CONTRACT

The Trial Court further erred in finding and concluding that the Respondent was damaged by the alleged breach. The Trial Court found and concluded as a matter of law that Appellant agreed that the mobile home would be ready for occupancy in August of 2011 and that this formed part of the contract or agreement between the parties.

It is fundamental that in order for a party to recover for breach of contract, all of the elements of a contract must be proven by the party bringing the lawsuit. This includes damages. *Carolina Trucks & Equipment, Inc. v. Volvo Trucks of North America, Inc.*, 492 F.3d 484 (4th Cir. 2007); *Jackson v. Midlands Human Resources Center*, 296 S.C. 526, 374 S.E.2d 505 (Ct. App. 1988).

In the case before the Court, the Respondent proved no damages. The Court found that the sole damage to the Respondent was a return of the consideration paid, or specifically the purchase price paid for the home. (R. p. 1). The Court's Order found no other damages owing to the Respondent from Appellant. (R. p. 1). However, as set forth above, this money was actually paid by the Respondent's brother, Glen Tool. (R. p. 43, ll. 5-15; p. 96). The Respondent failed to prove/establish any damages as a matter of law. If the purpose of damages in a breach of contract is to put the alleged injured party in the same position he or she was in prior to the execution of the contract, and the damages are the consideration paid, consideration should be paid to the individual suffering the alleged loss, which in this case was not Respondent. The Trial Court's Order awarding the Respondent Twelve Thousand ($12,000.00) dollars damages is clearly erroneous and should be reversed by this Court.

III. THE TRIAL COURT ERRED IN FAILING TO TAKE APPELLANT'S DAMAGES INTO CONSIDERATION OR TO AWARD APPELLANT DAMAGES FOR BREACH OF CONTRACT AGAINST RESPONDENT.

In the alternative, the Appellant submits that the Trial Court erred in failing to award the Appellant damages against the Respondent based on his counterclaim for breach of contract. In his Answer, the Appellant alleged a contract with Respondent to purchase a mobile home and to set it up on her property. Appellant spent Forty-five Thousand Nine Hundred Fifty and no/100 ($45,950.00) on the purchase of a home for the Respondent. (R. p. 11). Appellant paid to have the mobile home moved to Respondent's property. (R. p. 62, ll. 6-12). He paid out a substantial amount of money to connect the mobile home to sewage. He did a substantial amount of work to the home prior to the Respondent deciding she no longer wanted the home. (R. p. 68, ll. 1-25; p. 70, l. 18 - p. 72, l. 23; p. 171). In addition Appellant incurred additional moving fees once the Respondent decided she no longer wanted to purchase the home. (R. p. 67, l. 19 - p. 68, l. 6). Appellant offered testimony that his damages were Seventeen Thousand Four Hundred and Fifty and no/100 (17,500.00) dollars as a result of the Respondent's actions. (R. p. 81, ll. 18-25).

The Trial Judge failed to take any of the Appellant's damages into consideration in his Order. The Trial Court failed to take the Appellant's damages into consideration when he calculated the amount due and owing from Appellant to Respondent. (R. p. 1). The Trial Court further erred in failing to find and rule as a matter of law that it was the Respondent who breached her contract with the Appellant, resulting in substantial out of pocket expenditures and damages. The Trial Court's Order should be reversed by this Court and judgment should be entered for the Respondent Willie Fields.

CONCLUSION

The Trial Court erred in denying the Respondent's Motion for Directed Verdict on the grounds that the Respondent had standing in this case. The Trial Court further erred in determining that the Respondent was entitled to a return of the purchase price as her damages in this case. There is no evidence to support the Trial Court's Findings of Fact and Conclusions of Law that this condition was part of any contract between the parties. The Trial Court erred in finding and ruling as a matter of law that the Appellant breached a contract with Respondent entitling the Respondent to a return of the down payment. In the alternative, the Trial Court erred in failing to take the Appellant's costs and expenses into account and in failing to award the Appellant a judgment against the Respondent. For the reasons set forth above, the Appellant submits that the Trial Court's Order is erroneous and not supported by the evidence provided at trial and it should be reversed and in the alternative, that the Appellant be awarded Judgment against Respondent.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

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

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PROOF OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, certify that I have served the Final Brief of Appellant on counsel of record for Respondent in this action by depositing a copy of same in the United States Mail, postage prepaid, on July 17, 2015, addressed as follows:

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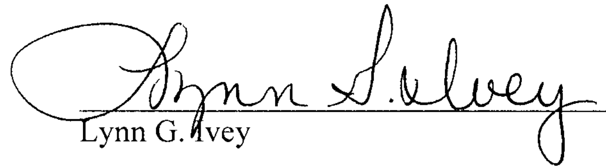

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July 17, 2015