

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit Judge

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SC Court of Appeals

Appellate Case No. 2015-001577

COPY

Shou Martin, Petitioner

vs.

Wilmer (John) Rife and Barbara Ann Doomey, Respondents

RESPONDENT'S RETURN TO PETITION
FOR WRIT OF CERTIORARI

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ATTORNEY FOR THE RESPONDENTS

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ISSUE ON APPEAL

- I. **Did the S.C. Court of Appeals rule correctly in affirming that the Trial Judge ruled correctly that the Petitioner did not have standing to bring an action on contract for the sale of the property and good will of Simon's of Anderson, Inc., a South Carolina non-profit corporation?**

STATEMENT OF THE CASE

Shou Martin, the named Petitioner, filed a suit for breach of contract against Wilmer John Rife and Barbara Ann Doomey, the Respondents, on December 31, 2010. The Respondents filed their Answer and a number of Counterclaims on February 3, 2011, denying the allegations of the Complaint.

The case was tried before the Honorable J. Cordell Maddox, Jr. on September 6 - 7, 2012. At the close of the Petitioner's case, the Respondents made the appropriate motions for a directed verdict and renewed the Motion at the conclusion of the trial. A jury verdict was returned in favor of Shou Martin individually in the amount of \$46,774.21. The Respondents filed a JNOV SCRPC Rule 50 Motion on September 11, 2012. The Order denying the JNOV Motion was filed June 14, 2013. The Respondents filed a Rule 59 Motion to vacate or reconsider on June 21, 2013. The Honorable J. Cordell Maddox vacated the Judgement on January 6, 2014. Martin filed a Notice of Appeal on January 17, 2014. The Court of Appeals affirmed the Order of Judge Maddox by Opinion filed May 6, 2015. A Petition for Re-hearing filed by the Appellant was denied by Order Filed June 22, 2015.

STATEMENT OF FACTS

In the case before the Court, Shou Martin, the Petitioner, in the agreement, [Appendix, p. 218] which was drawn by her attorney, failed to disclose, that Simon's of Anderson, Inc. was a not for profit corporation organized pursuant to S.C. Code §61-6-1600. The Petitioner refused to provide any documentary evidence to substantiate the claim to compensation during

discovery and at Trial. [Appendix p. 44 - 45]. The Corporation was the owner and operator of the Bar, not Shou Martin. [Defendant's Trial Exhibit 4] [Appendix p. 42 - 43]. The Corporation owned all of the equipment and other assets as shown by the Corporate tax Return introduced at trial. [Appendix, p. 218 - 225]. Shou Martin failed to disclose to the Respondents that she had no individual right to sell anything which belonged to Simon's of Anderson, Inc., a non-profit corporation. The Agreement, in and of itself was false and fraudulent.

The Respondents filed their Interrogatories and Requests for Production on or about October 3, 2011 and waited for over two years for the Petitioner to furnish any documentation of proof that she owned any interest in the business operated as New Simon's of Anderson, Inc. [Appendix, p. 54]. The Petitioner failed to furnish answers to the discovery; failed to provide answers when her deposition was taken, and failed to provide answers at Court when asked specifically as to any evidence of ownership of any of the corporate assets [Appendix, p. 54].

ARGUMENT

I. Did the Trial Judge rule correctly that the Petitioner did not have standing to bring an action on contract for the sale of property and good will of Simon's of Anderson, Inc., a South Carolina non-profit corporation?

The Petitioner continues to regurgitate the same baseless argument which was made to the Trial Judge and to the Court of Appeals. The Petitioner made no motion to amend her pleadings at any time, and the Respondents tried the case on the basis that Shou Martin as an individual, had no interest in and could not

recover in her individual capacity. The private club (Simon's of Anderson, Inc.), its contents and its good will was operated as a non-profit corporation, pursuant to the provisions of S.C. Code Ann. §61-6-1600 and was subject to the regulations R.7-401-3401.4 (a - f).

The 2005 corporate tax return for Simon's of Anderson, Inc. shows indisputably by the depreciation taken and claimed, that the assets and inventory of the corporation were treated as being owned by the corporation and not by Shou Martin [Appendix, p. 218 - 225]. All actions must be prosecuted by the real party in interest and Shou Martin was not the real party in interest. . The Petitioner is not allowed to lie on the Federal tax return as to the ownership of the property and then try to claim the opposite in a Court of law. Shou Martin as an individual [in the context of this case], had no standing to prosecute this action. Having no standing as an individual, deprives the Court of jurisdiction and presents no justiciable controversy as was set forth in the Brock v. Bennett case *infra*.

The Trial Judge ruled correctly when he granted judgement notwithstanding the verdict and vacated the jury verdict, on the basis that Shou Martin as an individual, had no standing to bring the lawsuit; the Court had no jurisdiction in that there was no justiciable controversy before the Court and further, the fact that Shou Martin was not the real part in interest. If the Court had allowed the judgement to stand, then the provisions of S.C. Reg. R:7-401.4 (E), would be rendered meaningless.

As a matter of law, pursuant to S.C. Reg. R. 7-401.4 (E), Shou Martin, individually, is not allowed to profit in any manner from the assets and/goodwill of Simon's of Anderson, Inc.

S.C. Reg. R. 7-401.4 E. Upon dissolution, liquidation or final termination of the operations of the organization, its residual assets must not inure to the direct benefit of any member or shareholder but must be turned over to one or more nonprofit organizations which are organized and operated for charitable purposes or for such other purposes as are authorized under Section 61-6-1600.

The Court, in Brock v. Bennett 313 S.C. 513, 443 S.E. 2d 409 (Ct. App. 1994) stated:

“Standing is a fundamental requirement for instituting an action... No justiciable controversy is presented unless the Petitioner has standing to maintain the action... Once it is determined a Petitioner has no standing to prosecute, the Court must dismiss the action.”

Standing refers to the fundamental requirement for instituting an action. Bank of America, N.A. v Draper 401 S.C. 214, 746 S.E. 2d 478 (Ct. App. 2013).

Shou Martin was given every opportunity to produce evidence from the discovery request; to the deposition; and by her testimony at trial to provide evidence of ownership apart from the corporation. She admitted in her testimony that Simon's of Anderson, Inc. was operated as a non-profit corporation and she further could not produce and did not produce any documentary evidence of any right to maintain suit in her individual capacity for anything. See the following Transcript excerpts:

Appendix, p. 42, lines 13 - 25:

Q: And Simon's of Anderson, Inc. was a non-profit corporation?

A: Yes.

Q: And you incorporated Simon's of Anderson in October of 2003?

A: Yes.

Q: You have always been familiar with the requirements of South Carolina Law to operate a non-profit corporation?

A: Yes.

Appendix p. 42, line 25; p. 43, lines 1 - 11:

Q: And in order to operate a private club you've got to be a non-profit corporation:

A: Yes.

Q. And as part of the rules and regulations of the State of South Carolina, when a non-profit corporation sells or dissolves, it has to give all of its profits to another non-profit corporation, doesn't it?

A: I don't understand what you're saying about that.

Q: When a non-profit corporation, under South Carolina Law, sells its assets, it has to give its profit to another non-profit corporation. Right?

A: Yeah. But, ok - go ahead.

Appendix p. 44, lines 4 - 21:

Q. You haven't provided us any list of invoices or anything to show that you actually did own anything, have you?

A. I don't provide the.. what?

Q. Have you provided me any bills to show that you paid for any of the equipment that was in Simon's?

A. I got some. Yes, I can.

Q. But you didn't provide them to me when I asked for them. Did you?

Mr. Mullinax: Your Honor, I would just ask that she answer my question.

The Court: Yes ma'am, just make sure you answer the questions.

Appendix p. 45, lines 1 - 5:

Ms. Martin: Ok.

The Court: Answer yes or no, I'll let you explain the answer.

Ms. Martin: Yeah, ok, ok.

Q. You have provided me no evidence, no documentary evidence, that you purchased or owned anything, have you?

A. No.

Appendix p. 50, lines 15 - 20:

Q. And although I've been asking you to provide me documentation of proof that you owned anything in the bar, for over 10 months, you still have not provided me any documents to prove that you owned anything, have you?

A. Ok. Danny working on that.

Appendix p. 54, lines 7 - 9:

Q. You have not provided me any documents to proof that you individually, owned anything. Have you?

A. I guess you say, no. I say, no.

Appendix p. 54, lines 1 - 7:

Q. You've got no proof that you owned a thing. Do you?

A. Now, you tell me to bring that.

Q. You've got no proof in this Courtroom today, that you owned anything?

A. I didn't show it to you. I guess not.... I know it my heart it does.

The standard of review for a trial judge where a Motion for JNOV has been made, is to view the evidence in the light most favorable to the non-moving party.

The Trial Court must grant the Motion when the evidence yields only one inference... An Appellate Court may not overturn the decision of the Trial Court under the State standard, if there is any evidence to support the Trial Court's ruling. Rogers v. Norfolk Southern Corporation 356 S.C. 85, 588 S.E. 2d 87 (2003).

As the Trial Court stated in its Order, there is no evidence in the record to establish ownership of any property by Shou Martin. The only evidence in the record is that of the corporate tax return showing ownership of all property in New Simon's of Anderson, Inc., a non-profit corporation.

Contrary to the argument of the Petitioner, as to the evidence required to support the granting of a Motion for JNOV, the scintilla reference has no bearing on this Court's review.

The Court of Appeals ruling should be upheld in its entirety as the evidence and testimony in this case shows that there was no evidence to support the assertion of the Petitioner as to any interest in the Corporation's property; and that standing is a fundamental requirement for instituting an action and in its further holding that "once it is determined a Plaintiff has no standing to prosecute, the Court must dismiss the action. See Appendix, pages 289 - 290.

II. The following question asserted by the Petitioner is invalid and should be stricken as a violation of S.C.A.C.R. 242 (d) (2) as it was not raised before the Court of Appeals; and for the further reason that it confuses S.C.R.C.P. Rule 50 and 59.

"Did the Court of Appeals have subject matter jurisdiction to rule on this case as the Defendant filed a second Rule 59 Motion on the same issues raised in its initial Rule 59 motion and the trial court did not have jurisdiction to rule on the second Rule 59 motion?"

As to the raising of this issue at this time, the same should be stricken by the Court as it is in violation of S.C.A.C.R. Rule 242(d)(2). The Petitioner's attempt to get around this Rule by describing this as an issue of subject matter jurisdiction, by attempting to argue that there were two Rule 59 Motions made which is simply not correct, and not born out by the record in this case. The Motion to vacate was made under S.C.R.C.P. Rule 50 within ten days of the trial date as is permitted by our Court Rule, S.C.R.C.P. Rule 50(b), Motion for Judgement Not Withstanding the Verdict. The Judgement not withstanding the verdict motion under Rule 50(e) was not ruled upon until June 21, 2013. The Respondent's Rule 59(e) Motion was made on June 21, 2013 as is provided by the South Carolina Rules of Civil Procedure and resulted in the Order of the Honorable J. Cordell Maddox, dated January 6, 2014, which was upheld by the South Carolina Court of Appeals.

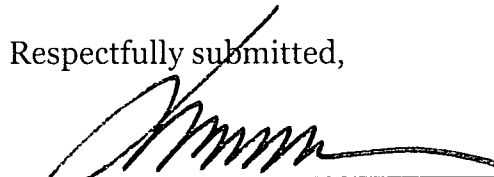
The Petitioner's attempts to couch this in the terms of subject matter jurisdiction and the filing of two Rule 59(e) Motions is simply wrong and should be summarily disregarded and dismissed by this Court.

In addition, this Petition does not fall within the purview of questions entitling consideration pursuant to S.C.A.C.R. 242(b).

CONCLUSION

It is respectfully requested that the Order of the S.C. Court of Appeals be upheld in its entirety and this Writ of Certiorari be dismissed with costs.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have this day served Respondent's Return to Appellant's
Petition for Writ of Certiorari, on the Appellant, by depositing a copy of same in
the United States Mail, postage prepaid, addressed as follows:

Mr. C. Rauch Wise
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646

August 18, 2015

Laura C. Mullinax
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SC Court of Appeals

Mr. Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Shou Y. Martin vs. Wilmer (John Rife and Barbara Ann Doomey)
Appellate Case No.: 2015-001577

Dear Mr. Shearouse:

Enclosed for filing, please find the following documents, in regard to the above referenced matter:

- 1) Original and seven copies of Respondent's Return to Petition for Writ of Certiorari
- 2) Original and one copy of the Proof of Service.

I would appreciate your returning a stamped copy of the above documents to me. I have enclosed a self-addressed, stamped envelope for your convenience.

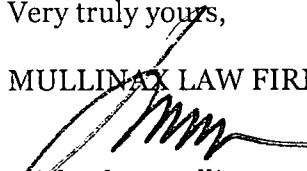
By copy of this letter to the Appellant's attorney, Mr. Rauch Wise, I am forwarding copies of the above documents.

Thank you for your assistance in this matter.

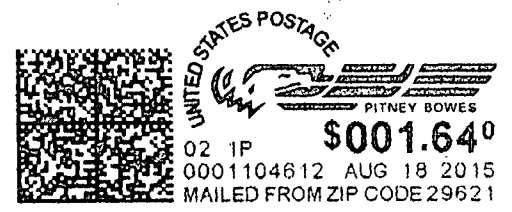
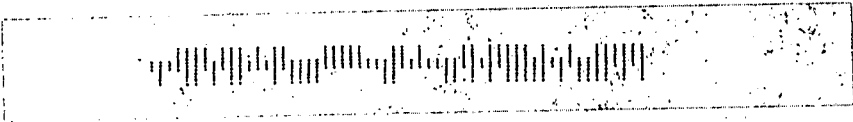
With kindest regards, I am

Very truly yours,

MULLINAX LAW FIRM, P.A.


Michael F. Mullinax

MFM/lcm
Enclosures
cc: Mr. C. Rauch Wise
S.C. Court of Appeals



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