

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Letitia H. Verdin
Court of Common Pleas
Trail Court Case No 2009CP2308727

Case No: 2013-002082

Goldie Grier Reeves,

Appellant.

v.

Dr. Rogers C. Reeves, individually and
as Trustee of the Reeves Family Trust,

Respondent,

INITIAL BRIEF OF RESPONDENT

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FEB 22 2016

SC Court of Appeals

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TABLE OF AUTHORITIES

- STATUTES:
1. SC Code § 15-48-130
 2. SC Code § 15-48-140

- CASES:
1. Swentor v. Swentor, 336 S.C. 472, 485-86, 520 S.E.2d 330, 337-38 (S.C. App., 1999)
 2. Pittman Mortg. Co., Inc. v. Edwards, 327 S.C. 72, 75-76, 488 S.E.2d 335,337 (S.C., 1997)
 3. C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359 (S.C., 2013)
 4. Gissell v. Hart, 382 S.C. 235,241, 676 S.E.2d 320, 323 (S.C., 2009)

STATEMENT OF ISSUE ON APPEAL

Did Judge Verdin err in her August 5, 2013 ruling by denying Appellant's Motion to Modify, Correct or Vacate the Arbitrator's Award?

STATEMENT OF THE CASE AND FACTS

Appellant filed her Summons and Complaint on October 13, 2009. The Complaint contained five (5) Causes of Action: Breach of Lease, Unjust Enrichment, Violation of Landlord Tenant Act, Injunctive Relief and Gross Negligence Against. Only the fifth cause of action for Gross Negligence was alleged against Defendant individually.

Respondent filed his Answer and Counterclaim on December 14, 2009, denying Appellant's claims and alleging Appellant was in breach of the lease for her failure to make needed repairs and otherwise properly maintain the house. Respondent also alleged Appellant breached the lease by failing to pay taxes and insurance. Respondent's Answer also set forth the defenses of violation of the applicable Statute of Limitations and an exception to the Landlord Tenant Act. On January 11, 2010, Appellant filed her Reply denying the Counterclaims set forth by Respondent.

The parties exchanged discovery. The matter was mediated on September 8, 2010 without success.

Nearing trial, on February 2, 2011, the parties and attorneys signed an Arbitration Agreement. (Arbitration Agreement). A Consent Order of Arbitration was filed on February 10, 2011. (Consent Order to Arbitrate).

Subsequently, Appellant became ill due to a stroke and cancer. Her condition prevented arbitration. In January, 2012, she was hospitalized and taken into the protective care of the South Carolina Department of Social Services. When she was released from that protective care at the end of the summer of 2012, the parties scheduled an arbitration hearing for October 12, 2012. A few days prior to the hearing the parties purportedly reached a settlement of all issues

and cancelled the arbitration. Subsequently, Appellant refused to sign the Consent Order setting forth the parties' settlement.

On November 14, 2012, a hearing was held before the Honorable R. Garrison Hill on Respondent's Motion to Compel Settlement, Appellant's Counsel's Motion to Withdraw as Counsel and Clifford Gaddy's Motion for Appointment of Guardian ad Litem for Appellant. The Motion to Compel was continued. The Motion to be Relieved as Counsel was denied and Karen McManaway was appointed Guardian ad litem for Appellant. (Hill 11/12/12 Order).

The Guardian ad litem investigated the matter and filed a written report at a hearing before the Honorable Leticia H. Verdin on February 6, 2013. The report advised the Court, inter alia, the Settlement Agreement appeared to be in Appellant's best interests. (GAL Report). Respondent's Motion to Compel Settlement was heard and denied at the February 6, 2013 hearing, at which time the Court ordered the parties to arbitrate this matter within fourteen (14) days. (Verdin 2/6/13 Order).

Arbitration was held before John R. Devlin on March 6, 2013. Present at that Arbitration were Appellant and her attorney, Melegia Lee Daniels, Respondent and his attorney, Terry G. Chasteen, and Appellant's Guardian ad litem, Karen McManaway. No record of the Arbitration was made.

The Arbitrator's Award was issued April 17, 2013, and found Appellant was entitled to no recovery on her claims and the Trust and Lease should be terminated. The Arbitrator also found it was in Appellant's best interest that the house be sold and the proceeds divided equally between Appellant and Respondent as suggested by Respondent even though he could have

insisted on retaining all sale proceeds. The Guardian ad litem fees were paid from the sale proceeds. (Arbitration Award). The judgement was filed February 26, 2013.

Appellant subsequently refused to move from her home since she would have no funds to pay for a move until the house was sold. At her Counsel's request, Respondent agreed to advance Appellant \$5,000 to pay the expenses of her move. A Supplemental Order to that effect was issued by the Arbitrator on May 2, 2013. (Arbitrator Supplemental Order). Appellant moved out of the house the next day and the house was sold to a builder on May 5, 2013. It was substantially renovated and has since been sold to a third party.

On July 17, 2013 Appellant filed a Motion for Reconsideration requesting the Court Vacate and Modify or Correct the Arbitrator's Award. (Appellant Motion). Judge Verdin signed an Order denying that Motion without a hearing on August 5, 2013. (Verdin 8/5/13 Order). Appellant filed her Notice of Intent to Appeal on September 6, 2013. (Notice of Appeal). Appellant's counsel was relieved by Order of this Court filed January 2, 2104, and Appellant proceeded with her appeal pro se.

ARGUMENT

Appellant has not established any grounds required by South Carolina law for modifying, correcting or vacating the arbitration award.

“Arbitration is a favored method of settling disputes in South Carolina. When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact.” Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997) (citation omitted).

“Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award. An award will only be vacated under narrow, limited circumstances.” C-Sculptures, LLC v Brown 403 S.C. 53, 56, 742 S.E.2nd 359, 360 (2013) (quoting Gissel v Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)).

Appellant’s motion includes claims based upon Sections 15-48-130 and 15-38-140 of the SC Code of Laws, 2012, as amended. “The court may correct or modify an arbitration award only in accordance with the provisions of Section 15-48-140 and the court may vacate the award only upon the establishment of one of the grounds set forth in Section 15-48-130 ...” . Swentor v Swentor, 336 S.C. 472, 485-86, 520 S.E.2d 330, 337-38 (Ct. App. 1999).

As grounds for her motion Appellant specifically cites paragraphs (a) (1), (2), (3) and (5) of Section 15-38-140 and paragraphs (a) (1), (2) and (3) of Section 15-38-140. (Appellant Motion). In regard to her request to modify or correct Appellant argues the award should be modified or corrected because of evident miscalculation or mistake, the arbitrator awarded upon a matter not submitted to him and the award is imperfect in a matter of form. The arbitrator did not make a record of the hearing. Appellant has not established any of the grounds required for modifying or correcting an award under Section 15-38-140.

In regard to her request to vacate the award Appellant argues the award was procured by corruption, fraud or other undue means, there was evident partiality, corruption or misconduct by the arbitrator, the arbitrator exceeded his powers and there was no arbitration agreement. The parties did, in fact, sign an arbitration agreement more than two years prior to the arbitration hearing. (Arbitration Agreement). Appellant has not established any of the grounds required for vacating an award under Section 15-38-130.

Appellant also sets out in her Brief the theory of "Ineffective Assistance of Counsel" as a basis for vacating the award. Such a theory is not a valid ground to vacate an award under the provisions of Section 15-38-130. Further, this theory is relevant only to criminal matters.

Finally, Appellant argues the parties and the Court did not consider her competency. She was represented by able counsel as well as a duly appointed competent Guardian *ad litem* during the arbitration hearing. The Court, in fact, made quite sure Appellant was adequately represented.

Accordingly, Judge Verdin did not err by denying Appellant's Motion to Modify, Correct or Vacate the Arbitration Award.

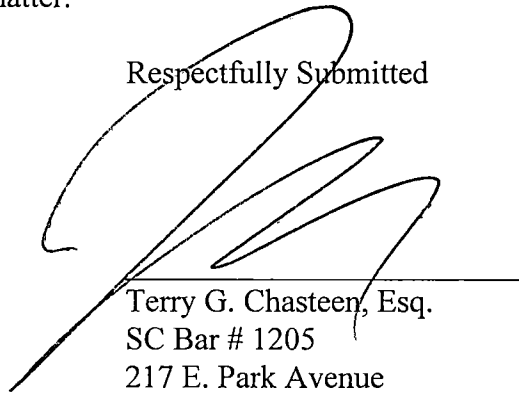
CONCLUSION

The parties and their attorneys agreed to arbitrate their differences in February, 2011. Due to Appellant's ill health and her attempts to delay moving from the home Arbitration did not take place until February, 2013.

Appellant was represented by capable counsel throughout this matter and a Guardian *ad Litem* was appointed for her by the Court and present at the arbitration hearing. No record of the hearing was made.

Appellant has failed to establish any grounds required by South Carolina law upon which to modify, correct or vacate the arbitrator's award. Accordingly, the Court should affirm Judge Verdin's Order of August 5, 2013 in this matter.

Respectfully Submitted



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Greenville, SC
February 19, 2016

PROOF OF SERVICE OF INITIAL BRIEF OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Trial Court Case No 2009CP2308727
Letitia H. Verdin, Circuit Court Judge

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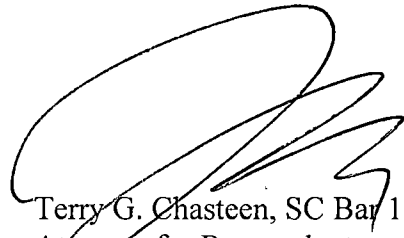
Dr. Rogers C. Reeves,
individually and as Trustee of
the Reeves Family Trust,

Respondent

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent on Goldie Grier Reeves by personally delivering a copy of it her on February 19, 2016 at 48 McPrice Court, Ste 1213, Greenville, SC 29615.

February 19, 2016


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SC Court of Appeals

Ms. Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter St.
Columbia, SC 29201

Re: Goldie Grier Reeves, Appellant, v Dr. Rogers C. Reeves, Individually and as
Trustee of the Reeves Family Trust, Respondent
Appellate Case Number 2013 – 002082

Dear Ms. Kitchings:

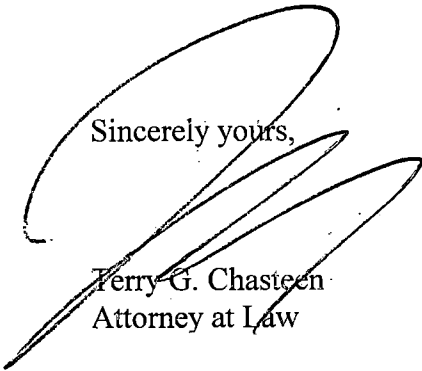
Please find enclosed for filing the following in regard to the above referenced matter:

1. Initial Brief of Respondent;
2. Respondent's Designation of Matters to be Included in the Record on Appeal; and
3. Proof of Service.

Please contact me if you have questions. I appreciate your time, consideration and assistance.

With kindest regards, I am

Sincerely yours,


Terry G. Chasteen
Attorney at Law

TGC/ib
enc

