

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

**RECEIVED**  
JUL 11 2016  
SC Court of Appeals

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Case No. 2010-CP-02-03055  
Appellate Case No. 2014-001579

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Melissa J. Lackey-Oremus and James T. Oremus ..... Appellants

v.

4 K&D Corporation, d/b/a Grand Estates Auction Company,  
Stacy Kirk and Valaria Devine ..... Respondents.

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**RESPONDENTS' REPLY IN SUPPORT OF PETITION FOR REHEARING**

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Alice F. Paylor, Esquire  
SC Bar # 4380  
R. Britton Kelly, Esquire  
SC Bar # 73741  
Rosen, Rosen & Hagood, LLC

Respondents filed a Petition for Rehearing, because Appellants had submitted no evidence that Respondent Devine had participated in, or directed, the alleged fraudulent conduct of Respondent Stacy Kirk, and Appellants had presented no evidence that the alleged fraudulent conduct would adversely impact the public interest as required by the South Carolina Unfair Trade Practices Act.

I. **APPELLANTS HAVE NO EVIDENCE TO SUPPORT THEIR FRAUD CLAIM AGAINST VALARIA DEVINE.**

In their Return, Appellants again cite to testimony about events that happened after the alleged fraudulent conduct. Appellants have presented no evidence that Ms. Devine directed, or even had knowledge that, Ms. Kirk was going to tell the Appellants that she had received a \$2 million opening bid. The only evidence is that the sellers, the Hirschhorns, were not happy with the high bid made by the Appellants, and they asked Ms. Kirk to ask the Appellants if they wanted to release their bid. That is what the sellers testified, as well as Ms. Kirk and Ms. Devine. R., pp. 170, 175, 180, 200-206. There is no other evidence relating to Ms. Devine prior to the alleged misrepresentations being made by Ms. Kirk to the Appellants.

All testimony relied on by the Appellants related to conversations between Ms. Devine and a former employee of the auction company after the alleged fraudulent conduct. Appellants have presented no case law precedent that allows a party to proceed against an alleged joint tortfeasor simply because that person owned the company involved.

Moseley v. All Things Possible, 388 S.C. 31, 38, 694 S.E.2d 43, 47 (Ct. App. 2011), aff'd, 395 S.C. 492, 719 S.E.2d 656 (2011), which involved the faxing of a falsified plat from a company owned by Mr. Hampton to its real estate agent who provided it to the purchaser of the real property, is directly on point:

Here, there was no evidence Hampton personally committed fraud. Lot 45 was owned by All Things Possible, not Hampton. Whitehead, acting as an agent of All Things Possible, provided the Moseleys with the falsified plat. There was no evidence Hampton faxed the falsified plat to Whitehead. All representations made to the Moseleys concerning Lot 45 were made by Whitehead. Accordingly, we reverse the circuit court's determination that Hampton committed fraud.

As this Court determined in Moseley, "there was no evidence [Devine] personally committed fraud.... [Kirk], acting as an agent of [Grand Estates Auction] provided [information] to the [Oremuses]. There was no evidence [Devine directed Kirk to make false representations.] All representations made to [the Oremuses concerning the auction] were made by [Kirk.]"

Respondents respectfully request that the Court grant this Petition for Rehearing and affirm the granting of summary judgment as to Ms. Devine with regard to the fraud claim.

**II. APPELLANTS HAVE NOT PRESENTED ANY EVIDENCE OF AN ADVERSE PUBLIC IMPACT.**

Appellants rely on testimony that, as some point in the past, Respondents allegedly used shills to get bidders to bid higher in an auction. That is not the conduct that Appellants claim happened in this matter. If Respondents had had shills bidding, the Appellants would not have been the high bidders. Instead, in this case, the facts were that the Respondents excluded a bidder who wanted to bid, and the high bid was not what the sellers wanted. In order for this alleged unfair trade practice to be repeated, the same facts would have to occur. There is no evidence that Respondents created the excluded bidder in order to have a means of coercing the Appellants to release their bid. The only evidence is that the excluded bidder was an independent person who wanted to participate in the auction. The alleged deceptive practice is telling the Appellants that the excluded bidder had made a \$2 million opening bid. There is no evidence that this had ever happened in the past or any likelihood that it would happen in the future. There was no evidence that Respondents' procedures "create[d] a potential for repetition

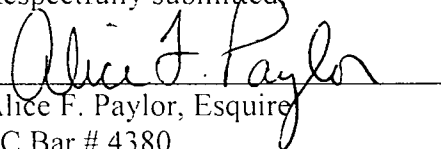
of the deceptive practices.” Schnellman v. Roettger, 368 S.C. 17, 23, 627 S.E.2d 742, 746 (Ct. App. 2007).

Appellants have failed to show the requisite adverse impact on the public, and Respondents are entitled to have summary judgment as to the SCUTPA claim affirmed.

**CONCLUSION**

For all of the reasons stated hereinabove and in the Petition for Rehearing, Petitioners-Respondents respectfully request this Court to grant a rehearing or, in the alternative, to issue a revised opinion affirming the Circuit Court's Order granting summary judgment to Respondent Devine as to the fraud claim and as to all Respondents as to the SCUTPA claim.

Respectfully submitted,

  
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Charleston, SC  
July 7, 2016

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**PROOF OF SERVICE**

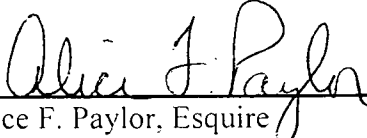
I certify that I have served a copy of *Respondents' Reply in Support of Petition for Rehearing* by regular U.S. Mail, postage prepaid, on **July 7, 2016**, addressed to their attorneys of record as follows:

Robin A. Braithwaite, Esquire  
Braithwaite Law Firm  
Post Office Box 324  
Aiken, South Carolina 29802

Robert L. Buchanan, Jr., Esquire  
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*Attorneys for Appellants*

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*Attorneys for Respondents*

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Alice F. Paylor  
apaylor@rrhlawfirm.com

July 7, 2016

RECEIVED  
JUL 11 2016  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: Melissa J. Lackey-Oremus and James T. Oremus v. 4 K&D Corporation, d/b/a  
Grand Estates Auction Company, Stacy Kirk and Valaria DeVine  
Appellate Case Number: 2014-001579

Dear Ms. Kitchings:

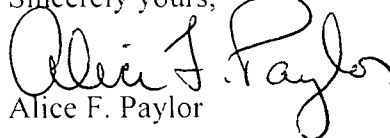
Enclosed please find the original and six (6) copies of Respondents' Reply in Support of Petition for Rehearing along with Proof of Service for same.

I would appreciate it greatly if you would file the originals and return a filed copy to me in the self-addressed, stamped envelope provided.

Thank you for your consideration in this matter.

With kind regards, I am

Sincerely yours,

  
Alice F. Paylor

AFP/dlw

Enclosures as stated

cc: Robin A. Braithwaite, Esquire (w/ enc.)  
Robert L. Buchanan, Jr., Esquire (w/ enc.)