

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
D. Garrison Hill, Circuit Judge

Case No. 07-CP-23-0779

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APR 24 2012

S.C. Supreme Court

Kenneth B. Jenkins, Respondent,

v.

Benjamin Scott Few, and
Few Farms, Inc, Petitioners.

BRIEF OF PETITIONERS

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STATEMENT OF THE CASE

The Plaintiff/Respondent Kenneth B. Jenkins was represented below and on appeal by Fred W. Suggs, III, of Greenville. The Defendant/Petitioner was represented at trial by Robert C. Childs who is joined on this appeal by J. Falkner Wilkes, both of Greenville.

This action was initiated by Summons and Complaint filed with the Clerk of Circuit Court in Greenville County. The Complaint was timely answered. A jury trial was held on the 25th through the 26th of August 2008 in the Court of Common Pleas in Greenville County, the Honorable D. Garrison Hill presiding. The jury returned a verdict in favor of the Respondent on causes for Trespass to Chattel, Conversion, Civil Conspiracy and for the Defendants on the cause under the Uniform Trade Practice Act. Actual damages were awarded in the amount of \$28,000. Punitive damages were awarded in the amount of \$100,000. Appeal was timely filed. The Court of Appeals, upon hearing the case, issued a published opinion affirming in part and reversing in part. Petitioners filed a motion for rehearing which was denied. The Petitioners then filed a Petition with this Court seeking review. The Petitioners' request was granted as to one issue and denied as to all others. This Brief follows.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in affirming judgment where the Respondent failed to allege any damages unique to the conspiracy claim?

ARGUMENT

I. THE OPINION OF THE COURT OF APPEALS FAILS TO RECOGNIZE THAT THE RESPONDENT ALLEGED THE SAME DAMAGES UNDER HIS CONSPIRACY CLAIM THAT HE ALLEGED IN OTHER CAUSES OF ACTION, SO THAT THE DAMAGES ARE NOT UNIQUE TO CONSPIRACY.

The Court of Appeals erred in affirming damages under a conspiracy theory where there were no special damages pled or proven. In its written opinion, the Court of Appeals held that the Respondent had alleged special damages from the civil conspiracy as “including, but not limit to, the destruction of [his fertilizer truck,] and the loss of revenue for the nine days which [he] could not operate his business.” The Court of Appeals went on to find that “Jenkins did not allege lost profits in regards to any other cause of action.” Contrary to the Court’s findings, the Respondent’s complaint clearly incorporated additional claims for the very same losses in other causes of action.

In his complaint the Respondent alleged trespass, conversion, conspiracy, unfair trade practice, and defamation. In seeking recovery under conspiracy the Respondent sought to recover damages for the loss to the truck and loss of revenue for nine days. (App. 74, Paragraph 23, Complaint). What the Court of Appeals overlooked is that the Respondent’s claims under unfair trade practices and

defamation *explicitly* incorporated the same losses the Respondent sought to recover under his conspiracy theory. (App 74, Paragraph 24, Complaint). Clearly the loss of revenue and value of the truck were pled in other causes. As a result, all or a portion were also recoverable in other causes of action. Since the loss of revenue and value of the truck do not go beyond the damages alleged in the other causes of action, they fail to be unique. Therefore, there can be no recovery under a conspiracy theory.

The elements a Respondent must demonstrate in order to prove civil conspiracy include: (1) the combination of two or more people; (2) for the purpose of injuring the Respondent; (3) causing special damages. Pye v. Estate of Fox, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). Because the quiddity of a civil conspiracy claim is the damage resulting to the Respondent, the damages alleged must go beyond the damages alleged in other causes of action. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App. 1989). Pye v. Estate of Fox, 369 S.C. 555 (2006).

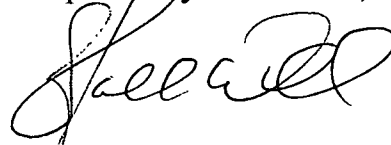
The decision of the Court of Appeals overlooks the fact that the Respondent specifically incorporated the loss of revenue and value to the truck in his other causes of action. There are therefore no damages unique to the conspiracy and therefore, no special damages alleged aside from the damages on all other causes.

The verdict form, as accepted by the Respondent, fails to provide for any findings as to special damages. (App. 69). There being no damages unique to the conspiracy, nor special damages found by the jury, the conspiracy action is barred. See Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App. 1989).

CONCLUSION

The decision of the Court of Appeals is therefore in conflict with prior decisions of this Court including Pye v. Estate of Fox, 369 S.C. 555 (2006). The decision of the Court of Appeals should therefore be reversed.

Respectfully submitted,



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April 19, 2012.

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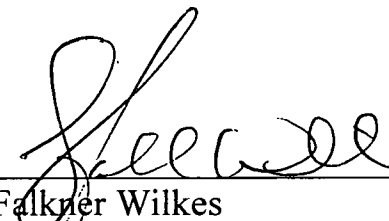
Case No. 07-CP-23-0779

Kenneth B. Jenkins, Respondent,
v.
Benjamin Scott Few, and
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CERTIFICATE OF SERVICE

I certify that on April 19, 2012, I served the Petition for Writ of Certiorari on the Respondent by delivering copies into the U.S. Mail, postage prepaid, addressed to the Respondent's counsel of record as follows:

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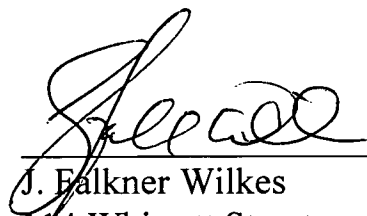
v.

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CERTIFICATE

I certify that a petition for rehearing was made and finally ruled on by the
Court of Appeals.



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March 30, 2011.