

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Alexander S. Macaulay, Circuit Court Judge

Case No. 2013-CP-04-2409
Appellate Case No. 2014-002058

Hubert Bethune, Respondent,

vs.

Waffle House, Inc., Appellant.

**MEMORANDUM OPPOSING THE APPELLANT'S
MOTION FOR REHEARING**

I.

The Respondent believes the Court of Appeals was absolutely correct in their decision in Hubert Bethune vs. Waffle House, Inc.

II.

With regard to the Appellant's suggestion that the Appellate Court did not sua sponte dismiss the case in Magistrate Court is incorrect. After the Respondent filed a Motion to have the action transferred, the Court did call the Respondent and request an

RECEIVED

JUL 26 2016

SC Court of Appeals

Order dismissing the case. It was the Court's suggestion. An Order was sent to them and they filed it.

The Magistrate Court was correct in doing so. A previous Motion to Transfer had been filed and not acted on by the Magistrate Court. An action had been subsequently filed in the Court of Common Pleas regarding the same matter prior to the Court's dismissing the action. When the Magistrate Court found out the other action had been filed, they requested that this action be dismissed. The Magistrate Court was correct in doing so because the damages exceeded the jurisdictional amount of the Magistrate Court.

III.

The Appellant is again stating that there is no support that the dismissal of the action was proper. There was another action pending in Common Pleas Court because the damages exceeded \$7,500, and the Respondent had requested that the Court transfer the Magistrate Court case because the damages exceeded \$7,500. This is a proper legal and factual basis for the decision.

The Appellant's position is a ludicrous position to take. They are saying that a Defendant can transfer the case to Common Pleas Court when the damages exceed \$7,500 but the Court and the Plaintiff are not allowed to transfer the case to Common Pleas Court when damages exceed \$7,500.

IV.

In Section 4 of the Appellant's Motion, they again say it was improper to dismiss the case and allow the case in Common Pleas Court to go forward because the Respondent "chose to file suit in Magistrate Court". This is not the first time that a party

determined that the damages were greater than they were when the case was filed. Bethune realized that he had a permanent injury to his tongue after the case was filed and determined that the damages would clearly exceed the jurisdictional limit of the Magistrate Court, being \$7,500. It is proper to raise the issue of subject matter jurisdiction at any time. It is also proper to have the case transferred or dismissed and allow the Common Pleas Court action to move forward when it is determined the damages may exceed \$7,500.

Again a Defendant may ask that the case be transferred to the Court of Common Pleas pursuant to Section 22-3-10 of the Code of Laws of South Carolina when "the damages claimed exceed \$7,500". There is no requirement, as the Appellant alleges that it be proven, but only claimed. Again, the Plaintiff should have every right the Defendant has.

It is also a questionable position for the Appellant to take that if the damages are determined to exceed the jurisdictional limit after the case is filed that it cannot be transferred. Cases and facts change, and it is often the case that damages increase or even possibly decrease during the pendency of the lawsuit before it comes to trial. Just because Bethune chose Magistrate Court to begin with does not mean the damages cannot be determined to exceed \$7,500 later.

V.

Again the Appellant takes an implausible position in Section V when they say that Bethune did not have a "right" to file an action in Circuit Court. How could it be claimed by anybody that a party does not have a right to file an action in Circuit Court? The Magistrate Court was correct in dismissing the case when they learned that the same case

was filed in Circuit Court with damages exceeding the jurisdictional limit of Magistrate Court. There is no need to exercise discretion as alleged by the Appellant but only have the case dismissed in Magistrate Court when it is pending in Circuit Court and the damages exceed \$7,500.

VI.

The Appellant also claims that they suffered legal prejudice by the action of the Magistrate Court. Any party can claim prejudice at any time when an adverse ruling is made. When a case is dismissed pursuant to Civil Rule 12(b)(6) or judgment is granted pursuant to Rule 56 or any other procedural motion, a party can claim prejudice.

The Court made the appropriate determination on the facts and law and this is not legal prejudice but an appropriate judicial determination.

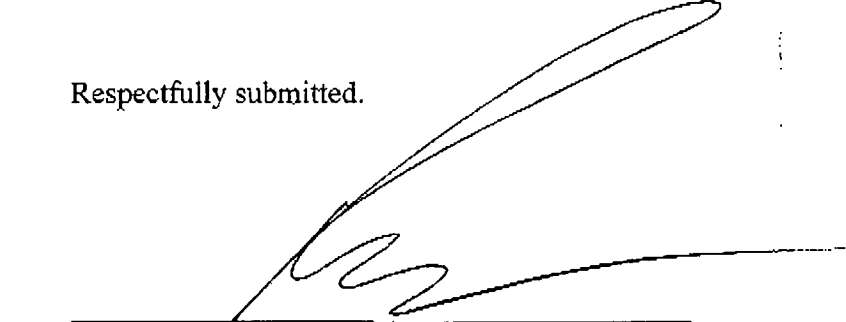
Also with regard to the prejudice, any and all rights the Defendant had in Magistrate Court they have in the Court of Common Pleas to defend the action.

CONCLUSION

Accordingly, it is clear that the Appellant's position is ill-founded. It is illogical to think that a Magistrate Court could not dismiss a case when the same case is pending in the Court of Common Pleas. It is further incomprehensible to think that a Defendant can transfer the case to Common Pleas Court from Magistrate Court and a Plaintiff or the Court cannot. Furthermore, it is without reason to suggest that the Appellant was prejudiced by the ruling when any ruling rendered adverse to a party's position is "prejudicial to their position" but not legal prejudice. The Court of Appeals was correct in determining the case should continue in Common Pleas Court, and the Magistrate was correct in dismissing the Magistrate Court action. The Defendant has every right, every

defense and every position available to them to defend the action in Common Pleas Court. In fact, they probably have more opportunities in Common Pleas Court than they had in Magistrate Court. It is clear that when the jurisdictional limit of \$7,500 is exceeded in Magistrate Court that it should be transferred to the Court of Common Pleas. Herein, the case was already filed in Common Pleas Court so it was proper for the Magistrate Court to dismiss this case and allow the case in Common Pleas Court to continue. Respondent respectfully requests the Court to deny the Appellant's petition for rehearing.

Respectfully submitted.



Rodney M. Brown
Attorney for Respondent
210 S. Main Street
Fountain Inn, SC 29644
(864) 862-2528

Fountain Inn, South Carolina

July 14, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Alexander S. Macaulay, Circuit Court Judge

Case No. 2013-CP-04-2409
Appellate Case No. 2014-002058

Hubert Bethune, Respondent,

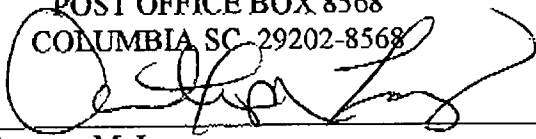
vs.

Waffle House, Inc., Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of Rodney M. Brown, P.A., attorney for the Respondent, does hereby certify that service of the Memorandum Opposing the Appellant's Motion for Rehearing was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 14 day of July, 2016.

ANDREW F LINDEMANN
DAVIDSON & LINDEMANN PA
POST OFFICE BOX 8568
COLUMBIA SC 29202-8568



Annette M. Lay

RECEIVED

JUL 26 2016

SC Court of Appeals

RODNEY M. BROWN PA
ATTORNEY AT LAW

July 14, 2016

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

RE: Hubert Bethune vs. Waffle House, Inc.
Appellate Case Number: 2014-002058

Dear Ms. Kitchings:

Please find enclosed for filing the original and six copies of the Memorandum Opposing the Appellant's Motion for Rehearing in the above referenced matter.

By copy of this letter and Certificate of Service enclosed, I am serving a copy on all counsel of record.

Sincerely,



Rodney M. Brown

aml

Enclosures

cc: Andrew F. Lindmann, Esquire

RECEIVED
JUL 26 2016
SC Court of Appeals