

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Op. No. 2016-UP-276

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S.C. SUPREME COURT

Hubert Bethune, Respondent,

vs.

Waffle House, Inc., Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

Rodney M. Brown
ATTORNEY FOR RESPONDENT
210 S. Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

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S.C. Code Ann. Section 22-3-30

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Rule 12(b)(8) SCRCF

STATEMENT OF ISSUES ON APPEAL

- I. The Petitioner's issue and brief fails to meet the standard for granting a writ of certiorari.
- II. Court of Appeals was correct in determining that the Court of Common Pleas correctly determined that they had jurisdiction over the case and the Magistrate's Court action had properly been dismissed.
- III. The Court of Appeals was correct in affirming the Court of Common Pleas in determining that they had jurisdiction of a case the Respondent had a right to file in Circuit Court.
- IV. The Court of Appeals was correct in failing to overrule the Circuit Court and Magistrate's Court for dismissing the case for lack of subject matter jurisdiction.

STATEMENT OF THE CASE

This case arises from the Magistrate Court dismissing the case pending in that Court because the Plaintiff/Respondent had filed an action involving the same set of facts and circumstances in Circuit Court.

The Plaintiff/Respondent, Hubert Bethune, initially filed a negligence action in Magistrate Court in 2012. The Plaintiff/Respondent alleges that the Waffle House was negligent in serving him food that contained parts of a broken plate which caused him to cut his mouth and his tongue. The Plaintiff/Respondent subsequently determined that the injury was more serious than he thought and that he had a permanent impairment to his tongue. Accordingly, the Plaintiff/Respondent filed a Motion with the Magistrate's Court to transfer this matter to Circuit Court since his damages now exceeded the jurisdictional limit of Magistrate Court.

That Motion had been set a number of times and had never been heard by the Magistrate Court. Therefore, the Plaintiff/Respondent filed a separate action in Common Pleas Court.

The Magistrate's office then called to schedule the Motion to Transfer and Plaintiff/Respondent's counsel informed the Magistrate Court that an action was already filed in Common Pleas Court. The Magistrate Court directed Plaintiff/Respondent's counsel to send him an Order of Dismissal since the Magistrate Court lacked jurisdiction given that an identical case was pending in Common Pleas Court and Plaintiff's alleged damages exceeded \$7,500. The Order was filed.

Waffle House subsequently filed an objection and was given a hearing. Waffle House presented all the arguments to the Magistrate that they are presenting to the Appellate Court herein. Their objection was denied and an Amended Order of Dismissal was filed.

Waffle House then appealed the dismissal to the Circuit Court. The Appellant filed a Notice of Appeal outlining why the Magistrate Court dismissal was inappropriate and the Plaintiff/Respondent filed a Return to the Notice of Appeal. A hearing was held in front of Judge Alexander S. Macaulay. After full argument and discussion regarding all the issues raised herein, the Judge affirmed the Magistrate Court's dismissal. Waffle House then filed a Rule 59 Motion which was denied.

The Petitioner/Waffle House then filed an appeal to the Court of Appeals. The Court of Appeals determined that the Magistrate's Court and the Circuit Court were correct in determining that the Magistrate's Court lacked jurisdiction and that it should continue to be pending in Court of Common Pleas.

ARGUMENTS

I. The Petitioner's issue and brief fails to meet the standard for granting a writ of certiorari.

Appellate Court Rule 242 provides the standard when the Supreme Court will grant a writ of certiorari. Pursuant to Section b, a writ of certiorari is a matter of sound discretion. There is no "special or important reason" in this case for the Supreme Court to grant the writ of certiorari.

The present case merely presents the issue that when a case exceeds the jurisdictional limits of the Magistrate Court, it should be transferred to the Court of Common Pleas. Herein, that was done.

It is an illogical position for the Petitioner to take that when the damages exceed the jurisdictional limits, that the case should not be transferred or that jurisdiction is not proper in the Court of Common Pleas. The legislature has decided that when the damages exceed the jurisdictional limits in a Counterclaim, it "must be transferred". See Section 22-3-30 of the Code of Laws of the State of South Carolina as amended. It is absurd to have a different standard for the Plaintiff than is used for a Defendant.

Accordingly, Respondent believes that writ of certiorari should be denied.

II. Court of Appeals was correct in determining that the Court of Common Pleas correctly determined that they had jurisdiction over the case and the Magistrate's Court action had properly been dismissed.

The Court of Appeals determined that "Magistrate's have concurrent civil jurisdiction and actions for damages for injury to rights pertaining to the person or personal or real

property if the damages claimed do not exceed \$7,500.00. Citing Lake vs. Reeder Construction Co., 330 SC 242, 498 SE2d 650, 653 (Court of Appeals 1998). The Court of Appeals correctly affirmed the Common Pleas Court in determining that they had jurisdiction over the case instead of Magistrate's Court because it lacked subject matter jurisdiction because the damages exceed \$7,500.00. It is hard to imagine how the Petitioner can argue that the Magistrate had jurisdiction over the case when the damages exceeded \$7,500.00.

Magistrate Court is a Court of limited jurisdiction and does not have jurisdiction over cases where damages exceed \$7,500.00. See Section 22-3-10 of the Code of Laws of the State of South Carolina, as amended.

In this case, the Respondent originally filed his case in Magistrate's Court and then asked that it be transferred to the Court of Common Pleas after it was determined that he had a permanent injury to his mouth and the damages would exceed \$7,500.00. The Motion was not heard for a long time, and the Respondent went ahead and filed the action in the Court of Common Pleas. The Magistrate Court then determined that it's action should be dismissed since jurisdiction was proper in the Circuit Court. It was appropriate for the Magistrate's Court to determine that two identical actions should not be pending in two Courts and it is appropriate to dismiss the Magistrate Court action.

It is undisputed that "when a Counterclaim is filed which if successful would exceed the Magistrate civil jurisdiction amount then the matter must be transferred to the Court

of Common Pleas". Section 22-3-30 of the Code of Laws of the State of South Carolina, as amended.

The Court of Common Pleas appropriately determined that lack of subject matter jurisdiction could be raised at any time and can be raised sua sponte by the Court. The Court of Appeals appropriately determined that the Magistrate Court did not have jurisdiction.

It is twisted logic that a Court must transfer a Counterclaim when it exceeds the Magistrate jurisdictional limits but not the original action when the damages exceed \$7,500.00. I am certain this was not the intention of the legislature. The Petitioner submits that Stroy vs. Nicpee, 105 SC 265, 89 SE 666 (1916) supports their position. However, that was an action for the return of property. In that case, the Court properly determined that where damages exceeded the Magistrate Court jurisdictional amount then the Magistrate Court is without jurisdiction. Stroy actually supports the reasoning of Respondent, Circuit Court and the Magistrate Court that the Magistrate Court lacked jurisdiction because the property sought exceeded the jurisdictional limits.

The Petitioner also suggests to this Court that Magistrate Court does not lose jurisdiction once it is acquired. Citing Piana vs. Piana, 239 SC 367, 123 SE2d 297 (1961). However, the legislature has determined since that even if the Magistrate Court has acquired jurisdiction, it must transfer the case if the Counterclaim exceeds the jurisdictional limits. See Section 22-3-30 of the Code of laws of the State of South Carolina. It can hardly be argued that a different standard would be used for the Plaintiff than the Defendant.

What is important here is that the Respondent be granted a fair trial and the jury determine the damages. The Petitioner is not losing any of their defenses, legal arguments or positions at all. They can use them all in Common Pleas Court as well as they could have in Magistrate Court. The only difference is the amount of damages changed during the pendency of the lawsuit. It can hardly be argued that this is uncommon. A Plaintiff's damages often change during the pendency of a lawsuit.

Clearly the Court of Common Pleas has jurisdiction and it was proper for the Magistrate Court to dismiss their case. Again, it is another illogical result to think that the Plaintiff would not have the right to file his case in Common Pleas Court.

Accordingly, the Respondent requests that the Writ of Certiorari be denied and that the only logical result would be as determined by the Court of Appeals, Circuit Court and Magistrate Court that jurisdiction is proper in Court of Common Pleas.

III. The Court of Appeals was correct in affirming the Court of Common Pleas in determining that they had jurisdiction of a case the Respondent had a right to file in Circuit Court.

The Magistrate was correct in determining that he did not have discretion in refusing to transfer the case or dismiss it because he lacked subject matter jurisdiction when damages exceeded \$7,500.00. He does not have discretion in that matter. As stated in Section 22-3-30 a Counterclaim must be transferred to the Common Pleas Court. Accordingly, the legislature determined that when damages exceed the jurisdictional limits of Magistrate Court, the matter must be transferred to the Court of Common Pleas.

Again, as stated previously, it is unreasonable to maintain that the Plaintiff did not have a right to have the case filed and heard in Common Pleas Court. The Petitioner is

correct in their allegation that Rule 12(b)(8) SCRCF requires that two duplicate actions cannot be maintained simultaneously. Accordingly, the Magistrate was correct in dismissing their case.

IV. The Court of Appeals was correct in failing to overrule the Circuit Court and Magistrate's Court for dismissing the case for lack of subject matter jurisdiction.

The Plaintiff/Respondent had already filed a Motion to Transfer the matter to Common Pleas Court. The Magistrate's Court failed to act upon this motion and the Respondent/Plaintiff filed an action in Circuit Court. The Magistrate Court was correct in determining that there could not be two cases in two Courts and that the Magistrate Court lacked jurisdiction because damages exceeded their jurisdictional limit. The Court acted sua sponte in dismissing the case. In fact, the Petitioner recognizes that by raising the issue that Rule 12(b)(8) SCRCF requires that two actions cannot be maintained simultaneously.

The Magistrate Court was correct in determining it lacked jurisdiction and dismissed the case. The Respondent/Petitioner sent the Order to dismiss the case when the Magistrate requested they do so. The Magistrate did so after learning that an identical action had been filed in the Court of Common Pleas and that their jurisdictional amount was exceeded in Magistrate Court. The Magistrate Court heard all these arguments by Petitioner when they filed and argued a Motion to Reconsider. The Magistrate Court correctly weighed all the information and legal arguments and granted the dismissal.

Also they argue that there needs to be an evidentiary foundation for such a dismissal in determining that the damages exceed the \$7,500.00. However, this is again

not what the legislature determined in Section 22-3-30 wherein it instructs the Magistrate that it must transfer the case when the damages requested, if successful would exceed the Magistrate's civil jurisdictional amount". It is clear that legislature set that the damages alleged in the Counterclaim and not proven by any evidentiary standard.

Again the Petitioner is requesting the Magistrate Court to treat the Plaintiff different than the Defendant. It is clear that when the Magistrate Court is informed that the damages exceed \$7,500.00, they must send it to Circuit Court. Petitioner's argument to the contrary is illogical.

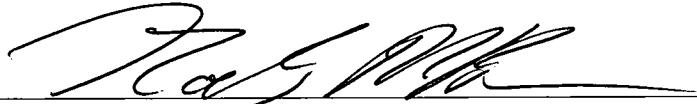
CONCLUSION

The Respondent/Plaintiff submits that the Petition fails for multiple reasons. First of all, there is no sufficient reason pursuant to the Court of Appeals' Rule 242(b) for the Supreme Court to grant the writ of certiorari. Secondly, the legislature makes it clear that when damages exceed the jurisdictional limits of Magistrate Court that jurisdiction is only proper in the Circuit Court. It is legally proper and makes sense that when the jurisdictional monetary limits of Magistrate Court is exceeded the jurisdiction must be transferred to the Court of Common Pleas.

The Magistrate nor the Court of Common Pleas committed any error in this case. The Court of Appeals in issuing an unpublished cursory opinion that this is not a sound argument nor a sound position to take.

Therefore, the Respondent respectfully requests the Court to deny the Writ of
Certiorari.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "Rodney M. Brown", written over a horizontal line.

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

October 31, 2016

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Hubert Bethune, Respondent,

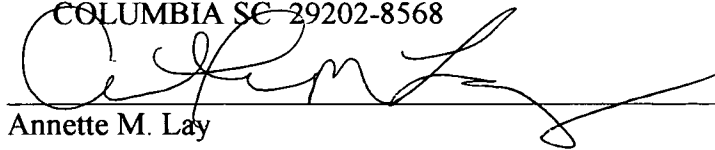
vs.

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CERTIFICATE OF SERVICE

The undersigned employee of Rodney M. Brown, P.A., attorney for the Respondent, does hereby certify that service of the Return to Petition for Writ of Certiorari 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 31st day of October, 2016.

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


Annette M. Lay