

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master-in-Equity

Trial Court Case No. 2012-CP-38-453
Appellate Case No. 2016-002350

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SC Court of Appeals

Le Feather, LLC, and Son Van Le,

Respondents,

vs.

Tuyet L. White,

Appellant,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- A. WHETHER THE TRIAL COURT ERRED BY FAILING TO DETERMINE THAT THE APPELLANT AND RESPONDENTS WERE IN A PARTNERSHIP?
- B. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE APPELLANT'S DISSOCIATION FROM LE FEATHER LLC WAS VALID?
- C. WHETHER THE TRIAL COURT ERRED IN FAILING TO ORDER AN ACCOUNTING?

STATEMENT OF THE CASE

This action was commenced by Respondents Le Feather, LLC, and Son Van Le when they filed an eviction action against Appellant Tuyet L. White in the Orangeburg County Magistrate Court. Appellant timely filed her Answer and Counterclaim denying the allegations in the Complaint and alleging constructive trust, unjust enrichment, breach of fiduciary duty, resulting trust, accounting, and asking that the case be removed from Magistrate's Court to Circuit Court. On March 5, 2012, Judge Peggy Doremus granted Appellant's Motion to Remove and transferred the entire case to Orangeburg County Circuit Court. On March 23, 2012, Respondent's filed an Appeal to the Orangeburg County Circuit Court. This appeal was denied on July 31, 2012.

The Parties agreed to refer the case to Judge James B. Jackson, Jr., by Order of Reference signed July 24, 2013, and filed July 26, 2013. A hearing was held before Judge Jackson on April 20, 2016. On July 18, 2016, the court issued an Order directing Appellant to vacate the premises at issue and pay Respondents rent retroactive to the Court's previous order dated December 18, 2013, and continuing through the date Appellant vacates the premises.

On July 29, 2016, Appellant filed a Motion to Reconsider. Appellant's Motion was denied by Order of the court dated October 26, 2016, and filed November 3, 2016. Appellant then timely filed and served her Notice of Appeal on November 22, 2016. The transcript was received by Appellant on January 11, 2017.

FACTS

Respondent Son Van Le and Appellant met on Halloween night in 2004 when Appellant picked Respondent Son Van Le up at the Atlanta airport. (Trial Tr. 215, April 20, 2016). The parties were first introduced by Respondent Son Van Le's mother, who was also Appellant's babysitter. (Trial Tr. 215:12-16). On his first visit to South Carolina, Respondent Son Van Le spent approximately a month in Orangeburg with Appellant in Appellant's home before flying out back to California. (Trial Tr. 261:12-13; 217:4-10). After Appellant and Respondent Son Van Le spent time together in Nevada, Appellant became pregnant with Respondent Son Van Le's child. (Trial Tr. 218).

Since 1991, Appellant has worked primarily at nail salons. (Trial Tr. 213:2-5). When the parties met, Appellant was operating a nail salon on Wingate Street, but criminal activity in the area caused problems with her business. (Trial Tr. 221:8-11). She and Respondent Son Van Le learned about a building being built on St. Matthews Road. Appellant was familiar with from having operated a nail salon there previously. (Trial Tr. 222:3-9). In order to start a business together, Appellant and Respondent Son Van Le set up Le Feather, LLC, with both of them as the sole members. (Trial Tr. 227: 7-8). Respondent Son Van Le handled all negotiations with the building owners. (Trial Tr. 223: 2-6). Initially, the parties were tenants leasing two of three units in the St. Matthews Road property. (Trial Tr. 51: 22- 52:6). The opportunity to purchase the whole building arose, and the parties discussed it. Eventually the building was purchased by Respondent Le Feather, LLC. Prior to purchasing the building, Appellant signed a Dissociation from Le Feather LLC.

The clothing store at the St. Matthews Road property eventually ceased operation, and a seafood market was opened in the third unit. Appellant worked primarily in the nail salon doing

business as Perfect Nails, and Respondent Son Van Le worked primarily in the seafood market. However both parties worked at the other stores on various occasions.

The parties personal and business relationships began to go badly when Respondent Son Van Le evicted Appellant from the home on Rhode Street in Orangeburg, South Carolina. Shortly thereafter, Respondents filed an action to evict Appellant from the St. Matthews Road store.

ARGUMENTS

A. THE TRIAL COURT ERRED BY FAILING TO DETERMINE THAT THE APPELLANT AND RESPONDENTS WERE IN A PARTNERSHIP.

An ongoing business relationship is clearly shown by the admitted actions of the Appellant and Respondent Son Van Le. Both the Final Order and the Order on Appellant's Motion to Reconsider fail to clearly state what the parties' relationship actually is. The Trial Court makes references to the parties' business relationship that are inconsistent and unclear. The Trial Court actually makes a finding of fact that "the business relationship between the parties is very confusing." (Final Order 4).

The Trial Court should have found that a partnership existed between Appellant and Respondents if the dissociation from Le Feather LLC, was valid. After indicating that the parties were not in a partnership, the Trial Court describes the dealings between the parties in a way that supports the existence of a partnership. South Carolina Code §33-41-210 defines partnership as an association of two or more persons to carry on as co-owners a business for profit. "To determine whether a partnership exists, the following tests are used: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management." *Moore v. Moore*, 360 S.C. 241, 261, 599 S.E.2d 467, 477 (Ct. App. 2004). When these conditions are met, a partnership is created "whether the parties foresaw and intended [one] or not." *Stephens v. Stephens*, 213 S.C. 525, 50 S.E.2d 577. The parties do not have to intend to create a partnership. They only have to intend to share profits, losses, and decision making power and a partnership is formed.

Respondent Son Van Le testified that he and Appellant did share in the profits and losses of Le Feather LLC. (Trial Tr. 96:6-8). The parties set up Le Feather LLC to create a barrier

between their personal and business assets. (Trial Tr. 227: 11-14). Even after Appellant signed a dissociation document, she and Respondent Son Van Le continued to work in each other's businesses. (Trial Tr. 98:7, 12). Respondent Son Van Le represented to vendors that Appellant was an officer in Le Feather LLC. (Trial Tr. 105:4-10). Appellant remained on the bank account for Le Feather, LLC. (Trial Tr. 156:19-25; 195: 22-25).

The initial business of Le Feather LLC was the operation of the clothing store, but the business continued after the clothing store ceased operating. Appellant and Respondent Son Van Le continued to act in the same way they did before and after the dissociation document was signed. In its Final Order, the Trial Court tries to draw an artificial line between the clothing business and the ongoing business of Le Feather, LLC. (Final Order 2). No evidence is cited to support the finding that the partnership ended, and as the Trial Court points out "there was no testimony to support any division of assets upon dissolution of the clothing business." (Final Order 2). There was no dissolution because the partnership did not end, but instead it simply changed the character of its primary business.

Neither the Final Order nor the Order on Motion to Reconsider make a clear finding as to what the parties business relationship is or is not. However, both the Trial Court's description and the parties testimony shows that Appellant was in a partnership with Respondents Le Feather LLC and Son Van Le after her dissociation from Le Feather LLC. To the extent the Final Order and Order on Motion to Reconsider find differently, the Trial Court erred.

B. THE TRIAL COURT ERR IN FINDING THAT THE APPELLANT'S DISSOCIATION WAS VALID?

One of the principle tenants of contract law is that for a contract to be enforceable there has to be valid consideration paid. It is undisputed that no consideration was paid for

Appellant's interests in Le Feather, LLC. (Trial Tr. 96:23-25; 97:1; also 87: 12-16). "The term 'dissociation' refers to the change in the relationships among the dissociated member [of an LLC], the company and the other members caused by a member's ceasing to be associated in the carrying on of the company's business." S.C. Code Ann. § 33-44-601 cmt. (2006). The change in relationship status requires that the party leaving be compensated because by dissociating, Appellant is giving up something of value. In fact, §33-44-701 requires compensation and sets up method for accomplishing it. Based on Respondent Son Van Le's testimony, it is clear that there was no compensation paid in this case and Appellant received nothing for her interest in Le Feather, LLC.

The effectiveness of the dissociation is crucial in this case because if Appellant remains a member of Le Feather LLC, she remains an owner of the St. Matthews Road property and would have a say in the decision of Le Feather LLC regarding evicting her from the property. Because no consideration was paid and none of the requirements of §33-44-701 were followed, the Trial Court should have declared Appellant's dissociation in void or invalid.

C. DID THE COURT ERR IN FAILING TO ORDER ACCOUNTING?

Because the evidence shows that the parties had an ongoing business relationship, an accounting is necessary to either dissolve the ongoing business relationship or alternatively determine what belongs to the business and what belongs to the parties. This case involves over ten years' worth of financial dealings between two individuals and their company. Large sums of cash moved around between the parties with little accountability. Respondent Son Van Le claims to have had approximately \$100,000.00 in cash in a backpack that he brought with him from California. (Trial Tr. 132:5-9). He also claims to have moved money into the country from Vietnam. (Trial Tr. 132:23-25; 133:1-7). Appellant took \$100,000.00 cash from her safe deposit

box to use for the purchase of the St. Matthews Road property. (Trial Tr. 234:1-15). Both parties also alleged making loans to each other and moving money out of their personal accounts into Le Feather, LLC's account.

Despite all this money moving around and changing hands and the possibility of either a partnership being dissolved or a member being dissociated from an LLC, no accounting was required by the Trial Judge. An accounting would have provided the information required for the purchase offer envisioned by S. C. Code §33-44-701(b) for Appellant's interest in Le Feather LLC.

Alternatively, Appellant has a right to an accounting as a partner of Respondents. Specifically, S.C. Code §33-41-550 gives any partner a right to a formal accounting "if he is wrongfully excluded from the partnership business or possession of its property by his copartners; . . . or whenever other circumstances render it just and reasonable." By evicting Appellant, Respondents are clearly trying to exclude her from the building which is one of the primary business assets. Gaining additional information to help make the determination of what asset belongs to which party would also be just and reasonable for resolving the complex business and personal issues between the parties.

The Trial Court erred by not ordering an accounting in this case to either provide Appellant what she is entitled pursuant to her dissociation with Le Feather LLC or allow her to assert her rights as Respondents partner.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Master-in-Equity and remand the matter to the trial court with instructions to order an accounting and a new trial to determine Appellant's rights as a member of Le Feather LLC or partner of both Respondents.

February 10, 2017

Respectfully Submitted,



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