

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2015-002054
Case No. 2007-CP-40-0576

In re: Tony Megna,

James A. Anasti,

Respondent,

Appellant,

V.

Lance Wilson, Willis
Goodwin, Gina L. Anasti Lee,
and Richland County Clerk of
Court,

Defendants.

FINAL BRIEF OF APPELLANT

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Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE LOWER COURT ERRED IN CONCLUDING THAT AN ATTORNEY DID NOT SUBMIT FRIVOLOUS CLAIMS?

STATEMENT OF THE CASE

This is an appeal, essentially involving the issue of whether Rule 11(a), SCRCP sanctions should have been assessed against attorney Tony Megna (“Megna”) relative to his misconduct in the ostensible representation of a client against whom summary judgment was granted.

Since 1978, James A. Anasti (“Anasti”) and his father Albert had owned a commercial real estate (hereinafter “the property”) as joint tenants with right of survivorship (R. p. 7 at II). In 1995, Albert died. In 1996, Anasti’s sister Gina A. Lee (“Lee”) filed a deed of distribution to the property, naming herself as the owner (R. pp. 1691-1692). On January 6, 2000, Lee sold the property to Lance Wilson and Willis Goodwin by way of a general warranty deed (various sources including R. p. 8 at V.; R. p. 1676 at 8.; and R. pp. 185-191). Subsequent to the sale, Wilson and Goodwin discovered that Lee did not own the property.

In 2004, Wilson and Goodwin initiated suit against Lee for selling them the property she did not in fact own (R. pp. 145-152). Megna represented Lee. Megna alleged in Lee’s answer that Lee in fact owned the property and also sought to foreclose on her ostensible mortgage on the property (R. p. 162, line 18 – p. 163, line 17). The lawsuit was

subjected to a dismissal pursuant to Rule 40(j), SCRCF. The case was ultimately reinstated, then referred to binding arbitration and tried.¹

On January 26, 2007, as the companion case languished without resolution, Anasti filed the within captioned action against Lee, Wilson and Goodwin, seeking, *inter alia*, to clear his title to the property (R. pp. 169-176). Lee, again represented by Megna, answered and counterclaimed and again alleged that she was the true owner of the property (R. pp. 184-191). Wilson and Goodwin answered, essentially, alleging that Anasti was the true owner and that a judgment in his favor would bolster their claims against Lee in their companion case (R. pp. 177-183). Considerable discovery took place.

Anasti filed for summary judgment as to title to the property (R. p. 409). Lee opposed it. A hearing was conducted. By Order dated October 26, 2007, the court granted Anasti's motion for summary judgment (R. pp. 6-15). On November 7, 2007, Anasti timely filed for Rule 11 sanctions against Lee and Megna (R. p. 462).

Anasti's motion for sanctions against Lee and Megna was duly set for January 8, 2008 (R. p. 484). Lee, through Megna, filed an appeal on January 4, 2008 from the Order granting summary judgment (R. p. 1225). In light of the filing of Lee's appeal, Anasti's Motion for Sanctions hearing against Lee and Megna was stayed (R. p. 16).

Thereafter, there were considerable delays during protracted appeals, including bankruptcy filings (and appeals) by Megna/Lee (SC Court of Appeals can take notice of appeals in its jurisdiction) and appeals of other sanctions imposed upon Megna by another

¹ The verdict was adverse to Lee in the sum of \$216,337.70 and with Anasti once again being declared the owner. (R. p. 45 at 5). That lawsuit has been subsequently referred to as the "companion case".

court in two separate cases. Lee's direct State appeals were ultimately dismissed as untimely (R. pp. 77-79). On January 18, 2013, a status conference was held in order to, *inter alia*, set a date for the within sanctions hearing against Megna. Megna stated at that time that all matters and motions personally involving Lee were moot, given her bankruptcy and loss of her appeals (R. pp. 229-231). He was the only one facing sanctions. A tentative date for a sanctions hearing against Megna alone was set. Thereafter, Megna engaged in further misconduct under Lee's name, but without her permission or consent. That misconduct resulted in two separate and distinct sanctions Orders being issued and appealed by Megna (R. pp. 84-96, R. pp. 97-109). He lost the appeals (R. pp. 130-132).² Upon exhausting all appeals, and with Lee being adjudicated bankrupt, the sanctions motion filed November 7, 2007 was ripe for resolution in late 2014. The parties agreed to submit the sanctions issue based on the court(s)' records and disposition in the various courts, the exhibits and the affidavits that had been filed relative to sanctions and in consideration of the written arguments relative to sanctions.

Appellant sought in excess of one hundred thousand dollars (\$100,000) in sanctions. On August 25, 2015 the lower court denied the motion to impose sanctions against Megna on the basis that Mena did not subjectively know that he had been engaging in sanctionable misconduct in defending Lee and asserting frivolous claims (R. pp. 137-139). The court denied Anasti's Motion to Reconsider. Anasti timely appealed on September 29, 2015.

² Megna has also been sanctioned by yet another court (for a third time) for completely separate and distinct misconduct. (See Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, 2010-CP-16-0332).

STATEMENT OF FACTS

1. Since 1978, Anasti and his father Albert had together owned commercial real property located at 2325 Two Notch Rd. in Columbia, *to wit*: “the property”, as joint tenants with the right of survivorship (R. p. 7 at II).
2. Albert died on October 19, 1995, leaving as his sole survivors his adult children Anasti and Lee (R. p. 7 at III). At Albert’s death, the property passed to Anasti as a matter of law (R. p. 13).
3. On October 25, 1996, and unknown to Anasti (R. p. 7), Lee filed with the Richland County Clerk of Court a deed of distribution to the property, naming herself as its owner (R. p. 7 at IV). Her claim of ownership was based on her deed (R. pp. 7 and 8).
4. On January 6, 2000, Lee sold the property to Wilson and Goodwin by way of a general warranty deed (R. p. 8). She represented to them that she was the sole owner. The sales price was \$177,000. In conjunction with the sale, Lee, Wilson and Goodwin utilized the services of a real estate law firm (Dallis Law Firm) (R. p. 28, 37 and 38). Dallis in turn utilized the services of an independent title abstractor (R. p. 28, and 39). The title abstractor erred in reporting that Lee owned the property, presumably by merely referencing the deed of distribution (R. p. 39). Consequently, Dallis erred in opining that Lee had a valid, marketable title to the property. The closing/sale was accomplished with the payment to Lee by Wilson and Goodwin of the sum of \$50,000 and Lee’s personal financing arrangement with Wilson and Goodwin. Lee received a note and mortgage for \$127,000 (various

sources including R. pp. 26-45, and R. pp. 118-129). No real estate title insurance was procured. Upon their presumed purchase, Wilson and Goodwin exhibited all indicia of ownership (various sources including R. pp. 26-45 and R. pp. 118-129).³

5. At some time between 2000 and 2003, Wilson and Goodwin learned that Lee did not own the property she had sold them. Lee also learned at that time that she apparently did not own the property (various sources including R. pp. 26-45 and R. pp. 118-129). In 2002, Wilson and Goodwin stopped paying Lee mortgage payments. They continued to conduct business on the property, to Lee's exclusion (various sources including R. pp. 26-45 and R. pp. 118-129). Though not receiving any mortgage or other payments thereafter, Lee did not seek to foreclose, did not pay taxes nor insurance, nor did she otherwise exhibit any indicia of ownership and never visited the property after she had sold it (various sources including R. pp. 26-45 and R. pp. 118-129). Lee did not return the \$50,000.00 down payment she had received from Wilson and Goodwin, nor did she return any of the mortgage payments that had previously been paid by them to her.
6. On November 12, 2004, Wilson and Goodwin filed lawsuit(s) against Lee (2004-CP-40-5333 and 5334, referred to as the "companion case") (R. pp. 142-158). In the companion case, Wilson and Goodwin alleged that Lee was not the true owner of the property she had sold them. They sought money damages.
7. Megna was Lee's attorney in the companion case lawsuit filed by Wilson and Goodwin against Lee (R. pp. 161-167).

³ They operated a nightclub on the property.

8. As Megna was ostensibly preparing Lee's defense, Megna received a real estate title opinion from Blue Granite Title (operated by attorney Joseph Moore) reflecting that Lee had no legitimate title interest in the property she had sold to Wilson and Goodwin (letter from attorney W. Joseph Moore, Jr. of April 30, 2004 with attachments). ⁴
9. On January 12, 2005, Megna filed a motion to join Anasti in the companion case. Megna alleged therein that "disposition of the action in his (Anasti's) absence may, as a practical matter, impair or impede his ability to protect that interest and puts defendant Lee at substantial risk" (R. p. 406).
10. On January 13, 2005, Megna expressed concern for Lee's apparent lack of interest in the property in the context of the companion case lawsuit filed against her. Megna proposed to Lee that they allege "adverse possession" that has been "continuing for more than ten years". Megna proposed this defense, using his words, in order to gain "leverage" for settlement, while concluding that it was a "longshot" and that he and Lee would be very "fortunate" if the scheme worked. Megna further stated that Lee must "...bring whatever possible actions you may have against Jim (Anasti) in the context of this lawsuit or they will most likely be forever barred" (R. p. 994).
11. On March 24, 2005, Megna answered Wilson and Goodwin's companion case complaint on behalf of Lee. Megna alleged that Lee had "good and marketable

⁴ This title opinion and other communications were provided to Anasti by Lee through her subsequent counsel after her representation by Megna was ended.

title” (R. p. 162, line 4). In Lee’s answer, Megna also sought to foreclose on the note and mortgage provided by Wilson and Goodwin to Lee.

12. In a Third Party/Crossclaim negligence suit Megna filed on Lee’s behalf against Dallis Law Firm in the companion case, he alleged that there was a “defect in the marketable title” from Lee to Wilson and Goodwin (R. p. 165, line 4). Contrary to what he asserted in Wilson and Goodwin’s lawsuit relative to having good title, Megna asserted in his legal malpractice case against Dallis that there was in fact a title defect and hence an impediment to Lee’s sale to Wilson and Goodwin. He sought money damages from Dallis.
13. On April 7, 2005, Megna wrote to the court, stating “I would appreciate you denying [sic] the Rule 19 motion (to include Anasti in the companion case) and removing it from the docket” (4-7-05 letter of Tony Megna addressed to the Chief Administrative Judge).
14. On January 2, 2006, Megna wrote to Dallis’ attorney, demanding that “under their (Dallis’) continuing legal and ethical obligations to Ms. Lee as her attorneys, take no action contrary to her position that she is, and has been since October, 1995, the rightful owner of the property in question” (R. p. 486). At the time, and in the context of ethical obligations, Megna asserted Lee’s “ownership” of the property commenced at its earliest in October, 1995.
15. On November 12, 2006, while the companion case was or had remained subjected to Rule 40(J) SCRCP dismissal, Megna wrote to attorney Moore, proposing that he join him in a contingency based lawsuit against Anasti on behalf of Lee to obtain title to the property. Megna stated that “the new lawsuit will be based on ten-years

adverse possession, plus twenty years prior” and, “obviously, we do not want to revive it (companion case) because I do not want anything to refer back to the original date...”. In a return letter Mr. Moore reiterated that Lee had sold the property in 2000 (R. pp. 995-996). He did not join in with Megna.⁵

16. On January 26, 2007, as Wilson and Goodwin’s companion case had languished without resolution and had previously been subjected to a Rule 40(J) dismissal, Anasti filed the within lawsuit against Wilson and Goodwin and Lee (R. pp. 172-176). Anasti sought to quiet/clear title to the property, for an accounting of funds paid from Wilson and Goodwin to Lee and for damages. In response, Wilson and Goodwin answered, essentially admitting that they did not own the property. Wilson and Goodwin further alleged in their answer that the resolution of the case in favor of Anasti would “buttress” their claims against Lee in the companion case (that had by that time been restored) (R. p. 178 at 9.).
17. Upon Lee being sued by Anasti, Megna continued with Lee’s representation in this case as well as in the companion case. He once again initiated and advanced defenses, counterclaims and arguments essentially the same as in the companion case. In Lee’s answer to Anasti’s complaint, Megna alleged, *inter alia*, that Lee owned the property by virtue of her deed of distribution and that Lee had been in continuous, hostile and exclusive possession of the property for both ten and twenty years, such as to be entitled to the property by way of “adverse possession” (R. p. 185 and 186). Megna undoubtedly knew at the time and throughout this case that

⁵ At Lee’s request, subsequent to her termination of her relationship with Megna, she had Mr. Moore provide the letters.

what he was asserting was materially false, internally and diametrically inconsistent with other pleadings and claims and had absolutely no chance of ultimately succeeding. This is so because, among other factors: (a) Megna had previously asserted and/or conceded in Wilson and Goodwin's companion case lawsuit that Lee had only first acquired the property in either 1995 or 1996, and she had sold it in 2000, (b) he already had a real estate title search opinion and other compelling evidence establishing that the claims he was advancing were disingenuous, and (c) any minimally competent attorney who had performed any factual investigation or legal research would know that approximately four years of "ownership" under a claimed deed of distribution would not constitute adverse possession, especially under "color of title". In essence, Megna was the one who had suggested baseless defenses to Lee, the opposing parties and to the courts in 2004, in 2005 and again in 2006 and 2007 and throughout the within litigation to the substantial detriment of Anasti. Whether this scheme was initially with Lee's concurrence or was Megna's idea is immaterial and moot.⁶

18. On March 20, 2007, after the companion case had been reinstated. Lee was deposed. She testified:

- her basis for claiming an interest in the property was predicated on her deed of distribution of October 25, 1996 (R. p. 245, deposition page 71, lines 4 and 5);

⁶ Before the sanctions hearing now involved in this appeal could be conducted, Lee was adjudicated bankrupt and, hence, is no longer a party. Both parties to the appeal have acknowledged that circumstance.

- she sold the property on January 6, 2000 (R. p. 245, deposition page 71, lines 1-5);
- she never went to the property after 2000 (after its sale) (R. p. 244, deposition page 50, line 19 – page 51, line 3); and
- after she sold the property in 2000, Lee had no more interest in it (R. p. 246, deposition page 76, lines 21-23).

19. On March 30, 2007, Anasti served interrogatories, requests to produce and requests to admit upon Lee's counsel Megna in this case. Megna responded by *inter alia*, submitting a CD containing the real estate closing documents relative to Lee's 2000 sale to Wilson and Goodwin (See R. p. 457 and 458; R. p. 454 and 455; R. pp. 1117-1119; R. pp. 990 -993; R. pp.1379-1382; as well as Tax receipts for 2002 and 2003 for the property; *Seller's Residential Affidavit*, 1-6-00; and *Seller's Affidavit*, 1-6-00). The documents again established that the defenses Megna was advancing lacked all merit, *vis a viz* adverse possession.

20. On June 14, 2007, subsequent to one of Anasti's motions to compel discovery, Megna called Anasti's counsel on the telephone and stated that he (Megna) was "sick and tired of dealing with discovery issues". Consequently, Megna said he was going to have one of his employees "deliver to you (Anasti's attorney) my entire file, and you can copy anything and everything in it; take what you want; I don't care" (R. pp. 1564 and 1565; R. pp. 1643 and 1644; R. p. 1652; and R. pp. 1654-1655). Thereafter, an employee of Megna's delivered what was purported to be Megna's entire file and reconfirmed that Plaintiff was permitted, per Megna's instruction, to inspect and copy everything in the file. Contained in the file were

real estate documents reconfirming that Lee had sold the property in 2000. The entire file was returned to Megna with an indication of precisely what had been copied. The documents produced by Megna appeared to reflect that it was Megna who had knowingly and initially suggested and encouraged Lee to advance illegitimate, bad faith defenses and claims in order to gain an unlawful advantage at the inception in the companion case and obviously continuing thereafter in this case unabated. Upon the documents production, Anasti's counsel consulted with an ethics attorney (Desa Ballard) to seek a second opinion as to what should be done with the documented proof of Megna's wrongdoing. Ms. Ballard advised that Anasti was clearly entitled to use the produced documents as they were (a) voluntarily and knowingly produced and (b) not privileged since it involved an attorney proposing apparent fraudulent actions to and on behalf of his client. (R. p. 1758-1762). Anasti did not utilize the documentation produced by Megna at the time because it was irrelevant and/or redundant of other documents establishing that Anasti should be granted summary judgment.

21. Lee's deposition was taken in this case on June 26, 2007. In her deposition, Lee testified consistent with her prior deposition in the companion case, *to wit*;

- She had not been on the premises since the mid 1980s (R. p. 8 at VIII);
- she knew of no evidence supporting any cognizable claim of ownership by her except for her deed of distribution (R. p. 262, line 19 – p. 263, line 8; R. p. 275, lines 16-18; R. p. 276, lines 9-14; R. p. 279, line 23 – p. 280, line 2; R. p. 280, lines 18-19; R. p. 282, lines 2-5; R. p. 283, lines 22-24 and R. pp. 8-9);

- she first acquired the property in 1996 pursuant to the deed of distribution she subsequently filed (R. pp. 8-9);
- Megna confided in her during a break in her deposition that the deed of distribution they were relying on “is just no good” (R. p. 285, line 23 – p. 286, line 15);
- Anasti was never ousted from the property (R. p. 280, lines 13-21; R. p. 281, lines 7-9; R. p. 282, lines 1-7; and R. p. 9);
- she had in fact sold the property to Wilson and Goodwin in 2000 and had no interest in it thereafter (R. p. 275, line 16 - p. 276, line 14; and R. p. 9);

22. Given Lee’s deposition testimony to the effect that she had never held the property for the requisite period of time to ever acquire it under any legal theory that could in good faith be advanced, Anasti filed a motion for summary judgment, accompanied by the deposition testimony, the relevant deed(s) and Anasti’s affidavit and reference to applicable law.

23. Plaintiff’s summary judgment hearing was held on September 19, 2007. Consistent with their prior pleadings and depositions, Goodwin and Wilson did not assert that their purchase from Lee was valid. They in no way supported Lee/Megna’s various defenses or claims of ownership. In opposition to Plaintiff’s motion for summary judgment, Megna submitted an affidavit signed by Lee (R. pp. 1674-1680). The affidavit was prepared by Megna. Lee’s affidavit was materially false. It was

inapposite of Lee's two depositions in two separate and distinct cases.⁷ Megna clearly knew that the claims he was repeatedly advancing were totally meritless. He did not argue against legal precedent. In essence, Megna's actions were to knowingly prepare disingenuous defenses and counterclaims, then present a clearly false affidavit and to argue the opposite of what he knew to be the truth.

24. At the summary judgment hearing, Megna initially conceded to the court that the deed to Anasti and his father Albert as joint tenants with right of survivorship was proper and legally cognizable. He stated that it "did exactly what he (Anasti) says it did at the time of death", and, "There is no doubt that we will concede..." (R. p. 203, lines 18-20). In conjunction, Megna stated that none of Lee's claims and defenses were predicated on probate law (the deed of distribution) (R. p. 210, lines 21-23). He argued instead that Lee's claim was based on adverse possession (R. p. 203, lines 17-24; R. p. 206, lines 13-17; and R. p. 210, lines 21-24). At the summary judgment argument, Megna represented to the court that Lee had hostilely held and actually continued in possession of the property for more than ten years "under deed of title, under color of title" (R. p. 203, lines 21-25). Those representations by Megna were clearly untrue and always known by Megna to be untrue.

25. The representation by Megna of Lee's continuous, hostile possession of the property commencing in 1995 until the time of summary judgment was beyond any

⁷ Lee asserted in subsequent affidavits relative to sanctions to be imposed against Megna that she did not read her summary judgment affidavit(s) nor did she understand them. She avers to have trusted Megna and merely signed what Megna told her to sign (R. pp. 1751-1754).

reasonable doubt known by him to have been untrue. This was not a situation in which Megna merely misspoke or otherwise made an innocent or accidental misrepresentation. He was repeatedly deceptive and duplicitous over an extended period of time, including during Lee's bankruptcy and on appeal (R. pp. 1036-1040; R. p. 1072; R. pp. 1086-1102; R. pp. 84-96; and R. pp. 97-109).

26. In view of the irreconcilable assertions of respective counsel as to whether there had been continuous, hostile, exclusive and uninterrupted possession of the property by Lee for over ten years, the court at summary judgment specifically questioned Megna as to whether Lee had sold the property in year 2000. At that point, Megna admitted that Lee had in fact sold the property in 2000. He stated;

**“but the truth is, when she sold it, there was nothing –
she owned nothing” (Transcript of Summary Judgment
Hearing, 9-19-07, page 10, lines 6-9).**

27. Upon being questioned further by the court, Megna reconfirmed that Lee had sold the property in 2000, thus establishing that what he had represented all along in the pleadings, in Lee's affidavit, and in his argument was untrue and known by him to be untrue; that Lee had not held the property for a sufficient period of time to acquire it by adverse possession. At that point, the court indicated that it was granting Plaintiff summary judgment. Megna then retracted his concession that Lee had sold the property in 2000. Megna stated; “She did not sell the property”. There is no way she could have sold that property.” (R. p. 208, lines 3-5). Upon Megna making that claim, the court admonished Megna (R. p. 208, lines 20-23). However, Megna persisted. Upon follow up questioning by the court, Megna

admitted and acknowledged that a) the property passed to Anasti at the time Albert died (R. p. 209, lines 12-15) and b) he (Megna) had prepared Lee's affidavit (R. p. 209, line 23 – 210, line 1). Megna then reconfirmed that he was, "not saying she took under the Probate Code" i.e. – not making a claim under the deed of distribution (R. p. 210, lines 21-24) and that Lee had sold it in 2000. Megna then asserted that Lee had actually possessed the property continuously and hostilely until 2007, to the exclusion of all others. (R. p. 206, lines 13-17 and R. p. 210, lines 1-14). At that point, the court had told Megna that he was "talking out four sides" (of his mouth); that the defense was an attempt at a "flim flam" and that Lee (in reality Megna) was not playing fair or by the rules (R. p. 211, lines 9-12 and R. p. 207, lines 16-18). When confronted with inappropriately attacking opposing counsel, Megna accused the court of being "unfair" (R. p. 211, line 13). ⁸

28. Despite Megna's lack of candor, the court granted Megna an opportunity/grace period to rectify his multiple misrepresentations (R. p. 212, lines 2-6). Essentially, the court allowed Megna what is commonly referred to as a "safe harbor" to retract false defenses and false arguments. Megna was provided with time to submit a proper affidavit of Lee or abandon his defenses and counterclaims relative to ownership of the property. The court admonished Megna that he was going to lose (R. p. 213, lines 6-11). Despite being given an opportunity to correct and make amends for the false defenses and claims he continuously attempted to foist from

⁸ Two other separate courts reached the same conclusion – that Megna was inappropriately attacking opposing counsel, who had done no wrong.

the inception, Megna did not thereafter respond appropriately. Megna had Lee falsely aver again in another affidavit that she had

“always maintained exclusive ownership of the Two Notch property”; and, her “ownership of the property has been on-going for over 11 years and has been open, continuous, and hostile to all other interests.” (R. p. 1717 at ¶ 2 and R. p. 1721 at o).

29. By Order dated October 26, 2007, Anasti was granted summary judgment. The summary judgment Order was duly filed on October 29, 2007 and transmitted that day to respective counsel. It was unquestionably received by respective counsel, and specifically by Megna by November 3, 2007 (R. pp. 19-23 and R. pp. 46-56).

30. On November 7, 2007, Anasti filed a Rule 11 motion for sanctions against Megna and Lee (R. p. 462). Anasti alleged in a supporting affidavit (R. p. 1733) that Megna had engaged in gross misconduct in Lee’s defense, to his detriment.

31. On December 5, 2007, the companion case filed by Wilson and Goodwin against Lee was tried. In that trial Lee testified and reconfirmed;

- her claim to the property was based on her October, 1996 deed of distribution; and
- she sold the property to Wilson and Goodwin on January 6, 2000.⁹

⁹ Megna argued at that time that Lee’s claim of legal malpractice against Dallis was because, if Dallis had accurately reported that Lee had no legitimate title, Lee would have held onto the property and ultimately thereafter been able to acquire it against her brother’s interest by adverse possession. The court was dubious and referred to it as “quite a stretch” (ROA from original appeal, page 520 – *Transcript of 5-12-07 Binding Arbitration*, page 185 line 1 through page 188, line 2).

32. On December 11, 2007, Plaintiff's motion for sanctions against Megna and Lee was noticed to be heard on January 8, 2008 (R. p. 484).
33. On January 4, 2008, Megna filed an appeal from the Order granting Anasti summary judgment. The then pending motion for sanctions against Megna and Lee, as well as a damages hearing, were thus stayed (R. p. 16). It was only at the time of his filing of the appeal that Megna claimed late receipt of the Order granting summary judgment. That claim by Megna was the opposite of what he had represented to the court at the December 5, 2007 companion case trial (when he argued that he had timely received it and that "everybody knew about it") (R. p. 223 at transcript page 192, line 24 – transcript page 193, line 22). The appeal was a transparent pretext by Megna to avoid sanctions and the consequences of his out-of-time filing of the appeal.¹⁰
34. Upon receipt of Lee's notice of intention to appeal, Anasti moved on January 22, 2008 to dismiss it as untimely – jurisdictionally defective. In contradiction to what he asserted to the court and opposing counsel in the companion case' trial on December 5, 2007, Megna then asserted that he had not (timely) received the summary judgment Order from the court. He reasserted that Lee owned the property.¹¹

¹⁰ The conclusion of the Bankruptcy Court Judgment dated January 15, 2010, independently appears to be the same (R. p. 1072).

¹¹ Those continued claims of Lee's ownership prevented Anasti from selling the property and harmed him further.

35. On March 18, 2008, the Court of Appeals remanded the case to the Circuit Court for a determination of Megna's timeliness in filing the appeal, with a hearing to be conducted as soon as possible (R. pp. 17-13).
36. A hearing was thereafter duly noticed and held as to the issue of timeliness. Megna did not appear and could not be located. The Circuit Court, however, considered all the evidence, motions and arguments that Megna had previously presented. The court found in its Order dated April 3, 2008 that the appeal filed by Megna was untimely and that what Megna had represented was not believable (R. pp. 22-23 at ¶ 13). The court found that Megna had made gross misrepresentations to the court(s) and had made unwarranted and unjustified attacks on opposing counsel. The court's Order was duly submitted to the Court of Appeals and the appeal was dismissed. With dismissal of the appeal, Megna was then facing sanctions, per Anasti's prior Rule 11 motion for same.
37. Megna then claimed that he had not gotten notice of the April 3, 2008 hearing. He sought reconsideration. The issue of Megna's notice and timeliness was allowed to be reconsidered. The case was again remanded to the Circuit Court for factual findings as to Megna's notice, timeliness or lack thereof in filing the appeal (R. p. 24-25). Considerable delays took place while Megna and then his law partner had ostensible conflicts. Then, the matter was delayed further while Lee sought separate counsel for the limited purpose of the remanded hearing. (R. pp. 46-56)
38. On August 15, 2008, the court rendered its decision and award in Wilson and Goodwin's companion case against Lee and Lee's legal malpractice case against Dallis. The court (arbitration by Judge Thomas Cooper, retired) found:

- at the death of Albert, the property became the exclusive property of Anasti;
- Lee clearly never had any legitimate claim to the property;
- Lee's sale of the property was invalid;
- Lee clearly did not own the property by way of adverse possession or based upon any legal theory advanced by Megna; and
- The evidence contrary to the legal position(s) taken by Megna was "irrefutable" (R. p. 38 at ¶ 31).

Accordingly, the court rendered a verdict/award in favor of Wilson and Goodwin (against Lee) in the amount of \$216,337.70. Lee's counterclaims against Wilson and Goodwin and her cross-claims against Dallis for legal malpractice were all specifically rejected. The court/arbitrator found that the claims advanced by Megna were meritless.

39. By Order dated April 1, 2009, the Circuit Court found and concluded once again that Megna's appeal in this case had been untimely and that he had in fact been given notice of the April 3, 2008 hearing. The court again found that Megna was not at all believable as to the pertinent issues, but with more emphasis and with detailed reference to irrefutable documentary evidence and facts proving same (R. pp. 46-56). Megna had once again been found to have made substantial and serious misrepresentations to the court(s) on multiple levels. The Circuit Court's Order was duly filed with the Court of Appeals.

40. On April 15, 2009, Megna filed another appeal (from the two Orders of April 3, 2008 and April 1, 2009 finding that he had been untimely in filing Lee's appeal in the first instance and that he had made gross misrepresentations to the court(s)).
41. On April 16, 2009, and undisclosed at the time to the South Carolina Court of Appeals and relevant to yet another, subsequent dismissal of Lee's/Megna's appeal(s) and further delay, Megna filed a bankruptcy on behalf of Lee. As a result, the dismissal of the Lee/Megna appeal(s), and hence the motion for sanctions against Megna, were stayed/delayed once again.
42. Anasti thereafter filed a motion in Bankruptcy Court to lift Lee's "§362 automatic bankruptcy stay" so that Lee's/Megna's State appeal(s), as well as the sanctions and damages hearings, could be addressed. Megna opposed lifting the stay.
43. On November 9, 2009, the Bankruptcy Court lifted the stay so that Lee's appeal could be addressed in State Court (R. pp. 60-66). Therefore, Lee's State appeal was required to be concluded or abandoned. If the appeal were abandoned, Megna would then be at risk of having sanctions being imposed against him alone in Circuit Court. Since Lee was in bankruptcy, she would not be affected unless she chose to further participate. She did not. Megna opted to continue Lee's appeal on his own. The result was further delay. Megna then filed in Bankruptcy Court a motion to stay its Order(s) (lifting the stay). In denying Megna's motion by Order dated January 15, 2010, the Bankruptcy Court found and concluded:

"Although Debtor is the party who filed the appeal in State Court, when faced with issues of the timeliness of her appeal or possible issues of attorney error, she filed bankruptcy to prohibit a final ruling."

The Bankruptcy Court also found and concluded:

“Anasti continues to be substantially harmed by Debtor in this proceeding”.

and;

“Debtor is unlikely to prevail on appeal and public interest is not served by Debtor’s motion.”

44. As a component of the Bankruptcy Court’s Order(s), Megna was only allowed to pursue the case through the appeal process in State Court. He was not authorized to charge her for the appeal or to otherwise appear on her behalf in this case. Given her bankruptcy, Lee had no more interest in this matter. Megna was the only one to benefit by the delays attendant with the appeal’s continuation.
45. At various dates and after the bankruptcy stay was lifted, Megna repeatedly, but falsely represented to various courts and attorneys, as well as the bankruptcy trustee and its clerk, that he had won the State appeal and that the April 3, 2008 and April 1, 2009 Orders of the Circuit Court had been overruled. Megna falsely claimed that the Circuit Court Orders had been “reversed” and its orders “set aside” by the Court of Appeals (R. pp. 1037-1038 and R. pp. 1039-1040). Per Lee’s subsequent affidavit, Megna also misrepresented the same essential thing to her (R. pp. 1751-1754). The Circuit Court’s Orders of April 3, 2008 and April 1, 2009 had not been “reversed” or “set aside” by the Court of Appeals.
46. Despite Megna’s repeated, but continued false assertions to the contrary, the Lee appeal was limited to the issue of Megna’s timeliness in filing the appeal (Order of S.C. Court of Appeals, 12-5-10). Neither Rule 11 sanctions nor the merits of the case were addressed by the Court of Appeals.

47. On April 1, 2011, the Court of Appeals rendered its decision that the Lee appeal(s) pursued by Megna was untimely. On April 28, 2011, the appeal was dismissed as untimely (R. pp. 77-79). Megna Petitioned for a Writ of Certiorari.
48. Upon the State Supreme Court's denial of Megna's Petition for Writ of Certiorari, the case was then set to be remitted on or about October 28, 2011. At that point, all that was presumably left for resolution was a) Anasti's damages hearing (not involving Lee or Megna, since Lee had been adjudicated bankrupt and Megna then had no client for the purposes of this case in any event) and b) the sanctions hearing against Megna alone (again in light of Lee's bankruptcy).
49. By letter dated November 1, 2011, Anasti sought from the Circuit Court a status conference to schedule the damages hearing against Wilson and Goodwin and the separate sanctions hearing against Megna (R. pp. 1086-1102).
50. By letter dated November 3, 2011, Megna falsely represented to the Circuit Court (Lee), *inter alia*, that the Rule 11 sanctions motion had previously been addressed by the Court of Appeals and resolved in Lee's favor (R. pp. 1086-1102). He also represented that the Court of Appeals had addressed the merits of the case and resolved them in damages in Lee's favor. With his letter, Megna submitted and referenced purported documentation he falsely claimed to rely upon as a basis for the Court to not consider the matter of damages of sanctions. Specifically, Circuit Court Judge Lee had not signed any Order dismissing Anasti's case as Megna asserted (R. pp. 1086-1102) and the bankruptcy document the attached as his Exhibit A was not what he purported it to be – it was not a Bankruptcy Court Order; rather it was an irrelevant 6th amended settlement proposal submitted by Megna to

the Bankruptcy Court. Megna further inaccurately represented that the matter to be addressed (sanctions against him) remained stayed by Lee's various bankruptcy appeals. That claim too was untrue. As the bankruptcy filings on PACER reflect, Megna lost each and every relevant motion, each and every motion for reconsideration and all appeals, including his ultimate appeal to the Fourth Circuit Court of Appeals *per curium*, as well as his motion for reconsideration. Moreover, a) Lee's bankruptcy clearly would not shield Megna from his own misconduct and b) the substance of Megna's claim is belied by the transcript of proceedings before the Circuit Court on January 18, 2012. (R. pp. 224-242).

51. On January 18, 2012, a status conference hearing was held relative to setting the damages hearing against Wilson and Goodwin¹² and the separate and distinct Rule 11 sanctions hearing against Megna alone. A schedule was tentatively set. At that time, Megna represented that any motions or matters involving Lee personally were indeed moot (R. p. 229, line 25 – p. 230, line 2).
52. Upon the Rule 11 sanctions hearing against Megna appearing imminent, Megna engaged in further misconduct so as to once again further delay the matter. That further misconduct by Megna resulted in even more delay and ultimately in two separate and distinct sanctions Orders being issued against him (R. pp. 84-96 and R. pp. 97-109).¹³

12 A damages hearing was ultimately held and an Order issued on July 1, 2013, thus establishing conclusively that what Megna had asserted in his November 3, 2011 letter to Judge Lee and later to Judge Baxley in his (Megna's) "Synopsis" was false (R. pp. 116-129).

13 At that point, Lee had submitted affidavits adverse to Megna, disavowing responsibility for his misconduct.

53. Megna appealed the two other Orders sanctioning him for independent misconduct.

The within sanctions matter was thus further delayed. The two sanctions Orders against Megna were affirmed on appeal. Megna filed Petitions for Writ of Certiorari. They were denied. The matter was then remitted. All that was left at that point was for a resolution of Anasti's November 7, 2007 Rule 11(a) motion for sanctions, as amended (to delete Lee in light of her bankruptcy). The parties ultimately agreed to have the matter decided by submission of briefs and affidavits with judicial notice being taken of all matters of record contained in the various Clerks of Court's files.

54. On August 25, 2015 the lower court issued its order denying the imposition of sanctions against Megna. The court denied Anasti's Motion for Reconsideration. This appeal has followed.

STANDARD OF REVIEW

The Appellate Court review of this appeal is one based in equity. The court is entitled to review the findings of fact in a Rule 11(a), SCRCP sanctions matter, taking its own view of the evidence.¹⁴ Ex Parte: Gregory v. Malloy, 378 S.C. 430, 663 S.E.2d 46 (S.C., 2008); In Re: Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004); Ex Parte Bon-

¹⁴ This is the same standard of review asserted by Megna in another case in which he was sanctioned (at least the third time he has previously been sanctioned). (See his briefs in Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, 2010-CP-16-0332 with a tracking number of 2014 001275; and Ex Parte: Tony R. Megna; Appellate Cases 2013-001461, February 11, 2015)

Secours, 393 S.C. 590, 713 S.E.2d 624 (2011), Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996); Hanahan v. Simpson, 326 S.C. 140, 156 S.E.2d 903 (1997); Father v. S.C. Dep't of Soc. Servs. 353 S.C. 254, 578 S.E.2d 11 (2003). An abuse of discretion standard also plays a role in the review where the decision is controlled by an error of law and/or based on erroneous factual considerations.

ARGUMENT

I. THE LOWER COURT ERRED IN CONCLUDING THAT THERE WAS NO PROOF OR LAW REFLECTING THAT THE ATTORNEY IN QUESTION KNOWINGLY SUBMITTED FRIVOLOUS DEFENSES.

This is a case in which it was overwhelmingly documented that Respondent Megna knew that the claims and counterclaims he has been advancing were frivolous, deceptive and were being advanced for purposes other than for a just resolution. The facts surrounding the prior companion case also prove it conclusively as well. Any reasonable attorney, doing any factual investigation, or even minimal legal research would certainly know the claims and defenses Megna was asserting had no chance of success. Summary judgment was accordingly granted. That judgment was not disturbed on appeal.

Appellant cited pertinent law and incontrovertible facts in the motion for summary judgment, in his motion for sanctions pursuant to Rule 11 and in both his memorandum in support of sanctions and in his reply memorandum. The lower court inexplicably concluded that no applicable law was cited and that there was no proof presented that Megna knew he was engaged in sanctionable conduct. Simply stated, the lower court erred on both a factual and legal basis. The underlying facts supporting the motion are compelling. It was regrettable but necessary to recite the pertinent facts spanning 12 years to put matters in context. Appellant would not relish the spectre of seeking sanctions against a member of the BAR except for Megna's conduct being so utterly egregious. The proof was beyond any reasonable dispute. Megna knew all along that the claims and defenses he was submitting were bogus. This court may again corroborate same by referring to the transcript of summary judgment in conjunction with the two previous sanctions Orders against Megna (R. pp. 84-96 and R. pp. 97-109), the two Orders of the lower court dated

April 3, 2008 and April 1, 2009 (R. pp. 19-23 and R. pp. 46-56), the Bankruptcy Court's conclusions about the conduct of Megna being to delay the consequences of his errors, and its own record of Megna's various appeals related to these matters since 2008.¹⁵

Factually, at the time Megna provided answers and counterclaims in this case and through the point in time when summary judgment was granted, he was clearly aware that Lee,

“did not inherit any interest in the property. Therefore, you did not own anything conveyed to Mr. Goodwin.” (letter from attorney W. Joseph Moore, 4-30-04)

He had previously referenced the real estate title opinion and accompanying letter,¹⁶ so it would be virtually impossible, to conclude that he did not appreciate the importance of what he proposed and then did. In response to suit in the companion case, Megna conceded that the legal opinion (that Megna's client had no case) was “essentially correct” (R. p. 994). In effect, Megna conceded that Lee had no ownership interest in the property. Nonetheless, Megna suggested disingenuous defenses as a means to gain “leverage” (R. p. 994). To do so was not just, nor appropriate in the companion case and certainly not in this one.

In this case, as well as in the companion case, Megna asserted and continued to advance frivolous claims that Lee inherited the property. He abandoned that argument only at the time of

¹⁵ The court can take judicial notice of its own files in this matter. (See Anasti v. Wilson, et al. Order dismissing Lee's appeal on April 1, 2011, Ex Parte: Tony R. Megna; Appellate Cases 2013-001461, February 11, 2015 and Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, 2010-CP-16-0332 with a tracking number of 2014 001275.)

¹⁶ These documents were supplied by Lee (her attorney Mr. Goings) after her representation by Megna had ended and directly relate to Megna's knowledge that he was presenting frivolous defenses and engaging in other serious misconduct. The lower court was incorrect as to the events under which the documents proving Megna's bad faith were produced and utilized, but that begs the question in that it is not necessary to address on appeal. See also prior court Orders (R. pp. 84-96; R. pp. 97-109; R. pp. 19-23; R. pp. 46-56).

summary judgment. Alternatively, he frivolously asserted that Lee owned the property by way of adverse possession by acquiring it in 1996, all the while knowing that she had “sold” it by general warranty deed on January 6, 2000. He compounded his errors by grossly misrepresenting at summary judgment that Lee still held the property adverse to everyone else in **2007** (R. p. 206, lines 13-17). He knew that was untrue. Lee confirmed it in her deposition.

In the companion case, Lee testified in her deposition that she had no legal or factual basis for a claim of ownership. In this case, Lee testified the same. During a break in the deposition in this case, Megna confessed to Lee that her deed was “no good” (R. p. 286, lines 6-7) and (R. p. 1753 at ¶ 8). Further, he knew without any doubt at all times that Lee had sold the property in 2000, thus conclusively establishing on all levels that her claims of owning the property by virtue of a “no good” deed and/or by way of adverse possession were beyond frivolous. Claiming ownership of the property pursuant to a deed of distribution in October, 1996 and selling it by way of a general warranty deed in January, 2000 is the antitheses of an adverse possession claim. Any minimally competent attorney would know that that time frame was not a sufficient time period in which to claim ownership by adverse possession.

At summary judgment, Megna made even more outrageous claims, at which time the court referred to them as an attempt at a “flim flam” (R. p. 211, lines 11-12). Megna persisted nonetheless, even after being advised that he was going to lose and that he was “talking out of four sides (of his mouth)” (R. p. 207, lines 16-18).

Summary judgment was granted. With the court granting summary judgment, the matter would have been ripe for a Rule 11 sanctions hearing, except for the incessant delaying tactics imposed by Megna. Hanahan v. Simpson, 326 S.C. 140; 485 S.E.2d 903 (912-13); Whitfield Construction v. Bank of Tokyo Trust, 338 S.C. 207, 525 S.E.2d 888 (891) (Ct. App. 1999).

In relevant part, Rule 11(a) SCRPC provides: “Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is an active member of the South Carolina Bar.” The Rule further provides that by his signature, the submitting attorney is certifying that “he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.” Rule 11(a) SCRPC. Rule 11 expressly provides for sanctions in the case of violations, stating “If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney’s fee.” Russell v. Wachovia Bank, N.A., 370 S.C. 5, 19, 633 S.E.2d 722, 729 (2006) (upholding to imposition of sanctions where statements in an affidavit were contradicted by affiant’s deposition testimony).

Appellant’s basis for sanctions are fully set forth in detail in his memoranda with attached exhibits dated December 23, 2013 and January 14, 2014. They, along with the referenced documents of record, Orders, transcripts of summary judgment, and in particular the affidavits of attorney Thomas Mann, Thomas Earle (attorney who represented Wilson and Goodwin), attorney Desa Ballard (who had consulted with Appellant from the inception relative to what Megna had done, was continuing to do and what obligations Anasti’s counsel had under the circumstances where Megna himself had provided proof of his own misconduct) (R. pp. 1137-1145) as well as the ultimate affidavit of Ms. Lee (R. pp. 1154-1157) clearly established Megna’s misconduct. For the lower court to have ignored Megna’s misconduct was in error, though arguably understandable in light of what the Federal Court referred to as a “tortured procedural history” which was

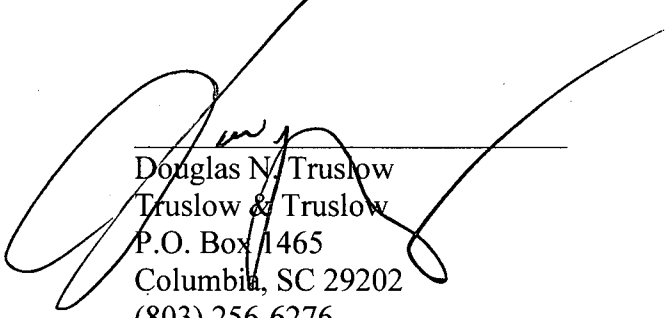
obviously the intent of Megna all along. Compared to Appellant's affidavits and prior Court Order, Megna submitted no counter affidavits or expert affidavit -- that Megna had engaged in serious misconduct. For the lower court to conclude that Appellant presented no facts to support his claims is simply inaccurate, the same as its conclusion that Appellant cited no applicable law. The record is replete. The Order denying sanctions should be reversed and the case sent back to lower court for a proper award of sanctions.¹⁷

CONCLUSION

Megna has repeatedly and unapologetically done a disservice to the courts, the legal profession, Plaintiff Anasti and Megna's own client Lee. Sanctions were warranted. For the reasons stated, this court should reverse the judgment of the lower court.

Respectfully submitted,

October 6, 2016



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¹⁷ While it is not necessarily relevant to the appeal, the lower court in its footnote appears to have confused Appellant's argument relative to the multiple appeals and bankruptcy appeals filed by Megna. Reference to those proceedings (and the disposition of the companion case) were to show Megna's dissembling and motive to delay a sanctions hearing -- so as to avoid sanctions, even going so far as to force his client into bankruptcy. That said, Megna's delaying this matter from 2007 through 2015 did cause additional harm that should be addressed.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 10 2016

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2015-002054
Case No. 2007-CP-40-0576

In re: Tony Megna,

Respondent,

James A. Anasti,

Appellant,

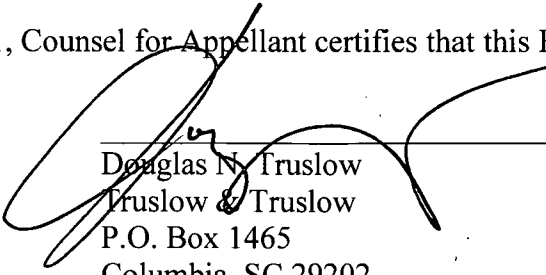
v.

Lance Wilson, Willis
Goodwin, Gina L. Anasti Lee,
and Richland County Clerk of
Court,

Defendants.

CERTIFICATION

Pursuant to SCACR Rule 211, Counsel for Appellant certifies that this Final Brief complies with SCACR Rule 211(b).


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October 7, 2016