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SC Court of Appeals

CASE NO.: 2016-001158

THE STATE OF SOUTH CAROLINA
IN COURT OF APPEALS

Wendell Cooper

Plaintiff-Appellant

v.

East Coast Granite and Tile Inc.

Defendant-Appellee

ON APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

AMENDED BRIEF OF APPELLANT

DATE: June 5, 2017

Wendell Cooper, Pro Se
117 Palm Springs Way
Simpsonville, South Carolina 29681

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STATUTES

S.C. UCC 36-2-106(4)

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S.C. UCC 36-2-512(1) (2)

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S.C. UCC 36-2-309

STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL COURT ERR AS A MATTER OF LAW BY NOT ALLOWING THE APPELLANT THE RIGHT TO REJECT THE DELIVERY OF GOODS THAT DID NOT CONFORM TO THE CONTRACT UNDER S.C. UNIFORM COMMERCIAL CODE 36-2-711 (S.C. UCC)?

DID THE TRIAL COURT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO BE RESTORED TO HIS PRE-CONTRACT

POSITION WHEN THE MAGISTRATE COURT RULED IN PLAINTIFF FAVOR UNDER S.C. UNIFORM COMMERCIAL CODE 36-2-106 (4)

DID THE TRIAL COURT ERR AS A MATTER OF LAW IN RULING THAT WHEN APPELLANT REJECTED THE DELIVERY OF GOODS FOR NON-CONFORMITY, WHICH THE BURDEN WAS ON THE SELLER TO PROVE THAT THE NONCONFORMITY WAS CORRECTED ACCORDING TO S.C. UNIFORM COMMERCIAL CODE 36-2-512 (1)(2). SEE CASE LAW MIRON V. YONKERS RACEWAY, INC., 400 F.2d 112, 119 (2 Cir.1968)?

DID THE TRIAL COURT ERR AS A MATTER OF LAW IN RULING THAT ABSENCE OF A SPECIFIC TIME PROVISION IN THE CONTRACT IS GOVERNED BY REASONABLE TIME TO CURE THE MATTER BEFORE NOTICE OF TERMINATION OF THE CONTRACT IN ACCORDANCE WITH S.C. UNIFORM COMMERCIAL CODE 36-2-309(2)?

DID THE TRIAL COURT ERR AS A MATTER OF LAW IN RULING THAT THERE WAS A BINDING CONTRACT BETWEEN THE APPELLANT AND EAST COAST GRANITE AND TILE WHEN THE CONTRACT WAS REJECTED FOR NON-CONFORMITY? SEE S.C. UNIFORM COMMERCIAL CODE 36- 2-606?

DID THE TRIAL COURT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO RECOUP ALL MONIES PAID IN ADVANCE IN ACCORDANCE WITH S.C. UNIFORM CODE 36-2-711? SEE (PECKHAM V. LARSEN CHEVROLET-BUICK-OLDSMOBILE, INC., 99 IDAHO 675,677,587 P. 2D 816 818 (1978) (RECOVER OF PRICE PAID).

DID THE TRIAL COURT ERR AS A MATTER OF LAW IN RULING THAT IN NOT RECOGNIZING THAT THE RECORD DID NOT CONTAIN ANY WRITTEN NOTICE BY THE SELLER TO CURE THE NON-CONFORMITY IDENTIFIED BY THE APPELLANT IN ACCORDANCE WITH S.C. 36-2-501 (1)?

STATEMENT OF THE CASE

The Pro Se Appellant Wendell Cooper respectfully submit this brief as motion to restore Appellant to his pre-contractual positon. The brief urges this Court to reverse the discussion below, and thus supports the position of Appellant Wendell Cooper.

On November 31, 2014, Cooper contracted with East Coast Granite to install Granite and Vessels in the master bathroom, guest bathroom, and hall bathroom. The installation of the above was delayed due to contractor's issues. Nevertheless, when Cooper met Geoff Polin at the warehouse he brought with him a sample of the flooring to match it with the granite. This was

done in the sun light, inside in the show room and sample of granite was taken to his residence to make sure that the paint, granite, and flooring matched.

On May 6, 2015, Cooper contacted Geoff Polin by email to inform him that the residence was ready for the granted to be installed. In this email Cooper informed Polin that the cabinet company he recommended never got back with him. In addition, Cooper asked Polin if his company would match C&A Home Improvement (C & A) price for the granite. C&A offered Cooper a discount on the granite provided that he purchased both the cabinet and granite.

On or about May 11, 2015, the granite was scheduled for installation. The installers never showed for the appointment.

On or about May 12, 2015, the granite was again scheduled to be installed. The installers never showed for the appointment.

On or about May 13, 2015, the granite was again scheduled to be installed. The installers never showed for the appointment.

On or about May 14, 2015, the granite was again scheduled to be installed. The installers did show up for the appointment, but with the incorrect color of granite. At this time, Cooper had a conversation with the installers and it was concluded that the granite was the incorrect color. The installers then removed the granite at the instruction of their supervisor.

On or about May 18, 2015, Cooper met with the store manager to discuss the issues with the color of the granite. At this time, the manager insisted that the color was correct and Cooper again disagreed.

On June 23, 2015, Cooper contracted with Blue Corral Stoneworks to finish the job that was not completed by East Coast Granite and Tile.

On June 23, 2015, Cooper filed a claim in small claims court to be reimbursed for expenses paid in advance in the amount of $2273.66, due to good being rejected because of non-conformity.

On September 29, 2015, this case was heard before Judge Dean Ford in Magistrate Court. In which Judge Ford ruled in favor of Cooper and instructed the Defendant to pay $80 court cost and deliver the rejected granite to Cooper.

On November 29, 2015, Cooper filed an appeal in the Court of Common Pleas.

On April 28, 2016, Judge Letitia Verdin dismissed the appeal in favor of the defendant.

Nature of the action and relief sought

This action against East Cost Granite and Tile for sale on approval and return of goods, which plaintiff alleges that defendant failed to deliver the correct color and pattern of granite. As a result, Plaintiff was forced to incur additional expenses by having another company to finish the work. The trial Court ruled in favor of the plaintiff by granting him court cost and the delivery of the non-delivered granite. The Court of Common Pleas of Appeal entered a judgment affirming the lower court decision not restore plaintiff to his pre-contract position. In the case at bar the Court failed explain the legislative reasons for its ruling. Plaintiff seeks reversal judgement to restore him to his pre-contract positon.

Nature of the judgment

The nature of the judgement agreed with the lower court's ruling. However, absent from the record is the Court's reasons of law for its decision. Thus, Appellant can only have speculated why the Court ruled against him, which creates an undue burden to defend his rights.

Basis of appellant jurisdiction

Appellant jurisdiction is based on Title 14-Court of Appeals section 14-8-260.

Effective date for the appellant purpose

The judgement to affirm the Magistrate's Court decision was signed April 28, 2016. The notice of Appeal was served and filed on May 27, 2016.

SUMMARY OF THE ARGUMENT

There is no evidence in record that would refute the testimony of both the plaintiff and his witness who personally heard the installers' state that the granite was not the same color as outlined in the picture. The installer made a call to the office and according to the installer he was informed to remove the granite.

The defendant failed to produce any directed testimony from any of the installers that would contradict the above statement. Defendant never denied that the installer said the granite was the wrong color. On the contrary, they provided testimony that the installers were not authorized to make the above statement. Nevertheless, they identified themselves as working for the defendant

The contract is non-binding until buyer accepts the goods and the installation of said goods. As such, the buyer rightfully rejected the goods when they did not conform to the contract. Thus, allowing plaintiff to cancel his contract and seek reimbursement. Since this case involves the rejection of goods it is not necessary for the plaintiff to address whether the seller has the right cure substantial defects that justify revocation of acceptance. See Pavesi v. Ford Motor Co., 155 N.J. Super. 373, 378 (App. Div. 1978) (right to cure after acceptance limited to trivial defects). Ramirez v. Autosport 88 N.J. 277 (1982), 440 A.2d 1345 and S.C. UCC 36-2-711.

Upon rejection of goods, the burden is on the seller to prove that the non- conformity was corrected. Miron v. Yonkers Raceway, Inc., 400 F.2d 112, 119 (2d Cir. 1968) and S.C. UCC 36-2-512.

Upon rejection of goods, the buyer is entitled to a full reimbursement of monies paid. S.C. UCC 36-2-711. (Peckham v. Larsen Chevrolet-Buick-Oldsmobile, Inc., 99 Idaho 675,677,587 P. 2D 816 818 (1978) 2-711 (Recover of price paid.)

The time for the seller to deliver the granite had exhausted and the buyer rightfully cancelled the contract.

In the color section of the contract the seller lists the color of the granite as "Gallo Ornamental" is type of stone with come in various colors. Pat's indoor and outdoor materials @ http:patscolor.com/materals/granite/giallo-ornamental/

The Court or defendant have invoked a statue, case law or standard of conduct that would deny plaintiff rights of a full reimbursement following the Court's ruling in favor of the Cooper.

The contract includes the approval of sold of goods and the installation of said goods. There is no instruction

ARGUMENT

I. THE CONTACT IS NONE BINDING BECAUSE THE BUYER REJECTED THE DELIVERY OF THE GOODS, THUS PROVIDING THE BUYER WITH THE RIGHT TO CANCEL THE CONTRACT.

A. The S.C. UCC Laws allows the buyer to reject the contract and receive reimbursement in several insistences.

1. S.C. UCC 36-2-606 (1) sates in part, "Accept of good occurs when the buyer after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity.

The seller has made part of his contract the following condition *(Page 1 of the contract item 18)* "All balances due are to be paid on arrival of the installation team. Homeowner or contactor will sign off that they are completely satisfied prior to the installation team leaving the job site. In this case Cooper rejected the delivery of goods as the result of the granite being the wrong color.

2. S.C. UCC 36-2-711(1)(b) "Where the seller fails to make delivery of repudiates or the buyer rightfully rejects or justifiably revokes acceptance the with respect to any goods involved...the buyer may cancel or and whether or not he has done so may in addition recovering so much of the price as paid has been. (b) Recover damages for non-delivery as provide in this chapter (Section 36- 2-713).

3. S.C. UCC 36-2-106 "Cancellation occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of termination except that the canceling party also retains remedy for the breach of the whole contract or any unperformed balance.

Cooper requested the reimbursement of payment that had been paid under rejected contract as the result of Cooper having hire another company to complete the job. Accordingly, Judge Ford was required by law to request the seller to reimburse Cooper the cost of the contract. As stated in Cooper's complaint, he should have been reimbursed for the installation cost because the seller never installed the granite.

B. The Seller Was Provide with Ample To Cure Buyers Reasons for Not Acceptance Non-Conformity of Goods, Which The Burden Remain with The Seller To Prove The Non-Conformity Was Corrected.

On or about May 14, 2015, the installer came to install the granite and removed the granite. Moreover, Cooper did not sign any paperwork accepting the delivery of the granite. On or about May 18, 2015 Cooper met with the manger concerning the color of the granite and a mutual to the matter was not obtainable. Nor did the Seller provide Cooper with any written suggestion that would indicate that they were willing cure the problem. Thus, Cooper filed a complaint in Small Claims Court on June 23, 2015. Furthermore, there is no specific time provision in the seller's

contract for delivery. The seller has reasonable time to deliver the after a request by buyer to deliver the good. Where a contract provides for successful performance but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may terminated at any time by either party. *(See S.C. UCC 36-2 309).* The time following Cooper's rejection of the delivery of the granite coupled with the silence by the seller to address the matter at hand. Cooper decided to file a complaint in Small Claim Court canceling his contract with the seller. Thereby asking the Court to enter a judgment for Cooper in the about of the cancelled contract. *Ramirez v. Auto 88 N.J. 277 (1982) 440 A.2d 1345*

This case is very similar to the case at bar. The respondent rejected the van delivery following the inspection of the van with a salesman he advised the respondent's not to accept the van because it was not ready for delivery. Even though the two parties tried to work things out they could not come to an agreement, therefore the respondents never took possession of the van. The court ruled that the respondent's had a right to cancel the contact for any nonconformity and be restored to their pre-contract positon. Nonetheless, the seller may still effect a cure and preclude unfair rejection and cancellation by the buyer. The trail court determined respondent had rejected the van within a reasonable time. Appellant has the burden of proving that it had corrected the defects and court found that Appellant did effect a cure. Thus, the respondent was entitled to cancel the contract.

C. Appellant Provided Testimony From A Witness That Was Present During the Installation of the Granite. The Witness testified that the Installers Stated That the Granite Was the Wrong Color.

The Appellee did not present any documentation or testimony that installers were not qualified to make the above statement. It would appear that the installers would have to some knowledge base about granitite because the seller's contract requires them have the homeowner

to sign-off that there is no damage to granite and they are completely satisfied before the leave the residence. When the installers came to Cooper's residence they identified themselves as employees of East Coast Granite. Clearly, they were representing East Coast Granite and Tile when they made that statement. Judge Ford failed to explain judicial reason for his ruling, so it is unclear if the above testimony was taken into consideration.

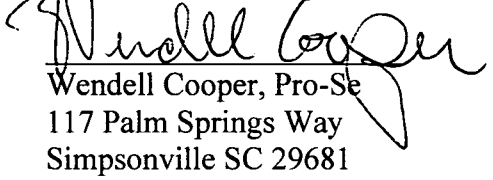
D. The Sales Representative Geoff Polin Mislead Court When He Stated That Appellant Contract With Another Company To Purchase The Granted At A Cheaper Price.

Cooper never contracted with another company (C & A) to install granite. However, Cooper did obtain an estimate from C & A to purchase granite. The estimate was obtained because Cooper was purchasing cabinets and C & A offered a discount on the granite if both were purchased from the company. I shared this information with Polin and ask him if he would match the price. Polin called Cooper to inform him that his company does match other companies' prices. There is a difference between an estimate and a contract. A contact means that the buyer has agreed to make a purchase based on the estimate. This was not situation in this case, consequently Polin misspoke when he testified that Cooper entered into contact to purchase the granite a much lower price before East Coast Granite and Tile Inc. fabricated his granite. (Dep. Page 9, 2-14). Furthermore, Cooper had already paid for East Coast Granite and Tile to install granite as outlined in the contract on November 31, 2014. (Dep. Page 9, 3-10). Moreover, the company that wrote the estimate that Polin is referring to did not install the granite. The contract to purchase the granite from Blue Carol Stoneworks was done on June 23, 2015, after East Coast Granite and Tile refused to cure the problem.

CONLUSION

Accordingly, the court of common pleas judgement against Cooper's should be denied for the foregoing reasons.

Respectfully Submitted.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Leitita H. Verdin, Circuit Court Judge

Case # 2016-001158

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V.

East Coast Granite and Tile Inc., Respondent.

DESINATION OF MATTER TO BE INCLUDED IN THE REORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

1. Complaint of June 23, 2015;
2. Answer;
3. Order of September 29, 2015;
4. Order of April 28, 2016;
5. Contract of November 31, 2014;
6. Invoice of Blue Coral Stoneworks
7. Transcript of Proceedings pp 9, 2-14.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 5, 2017

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