

ELECTRONICALLY FILED - 2017 Mar 23 11:59 AM - CHEROKEE - COMMON PLEAS - CASE#2014CP1100938

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-11-0938

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Joey Lemmons, d/b/a)
Rugs International,)

OCT 16 2017

Plaintiff,)

SC Court of Appeals

vs.)

ORDER

Macedonia Water Works, Inc.,)

Defendant.)

On June 16, 2016, the Defendant, Macedonia Water Works, Inc., ("Macedonia"), filed a motion for summary judgment pursuant to Rule 56, South Carolina Rules of Civil Procedure, for summary judgment (the "Motion"). The Motion was argued by the parties at a hearing held on January 6, 2017. Upon the Court's consideration of the filed pleadings, affidavits, supporting memoranda of law and oral arguments of counsel and further based upon the conclusions of law set forth herein, the Court grants the Motion in favor of Macedonia as to each of Plaintiff's causes of action.

I. PROCEDURAL HISTORY

On November 24, 2014, this civil action was commenced by Plaintiff, Mr. Joey Lemmons, d/b/a Rugs International. Macedonia answered the Complaint of Plaintiff on January 15, 2015. Macedonia then served its Motion in this matter on June 16, 2016. The hearing of this matter was held on January 6, 2017. Plaintiff was represented at the hearing by Douglas N. Bramon. Macedonia was represented by Lawrence E. Flynn III and Joseph L. Mathis. At the hearing, the Defendant's Memorandum in Support of its Motion for Summary Judgment included an Engineering Report of the Defendant's expert (Exhibit 6) and an Engineering

Affidavit of the Plaintiff's expert (Exhibit 7).

II. INTRODUCTION AND BACKGROUND

In this matter, Plaintiff claimed Macedonia violated the provisions of S.C. Code Ann. Section 58-3-390 (2014 Supp.), which prohibits a utility from charging tap fees, service fees or other charges for the installation and maintenance of a separate fire sprinkler line that exceed the utility's costs of serving such line. Plaintiff further claims Macedonia was unjustly enriched because Macedonia's overcharged Plaintiff for its water service, a result of Plaintiff paying a higher monthly water bill than he believes is permitted by law.

Plaintiff is the owner and operator of the business known as Rugs International, LLC ("Rugs International") located in Cherokee County, South Carolina. Rugs International obtains water from Defendant and is otherwise provided with water service by Defendant. The building housing Rugs International is protected by an interior fire sprinkler system and contains other plumbing to receive potable water service. Water is supplied to both the fire sprinkler system and the potable water system by a single dual-purpose water line connected to Macedonia's water system.

The volume of water used by Rugs International is measured by a single "compound meter," that includes both a meter for an eight-inch water line and a meter for a four-inch by-pass water line.¹ Compound meters are used where it is expected that the volume of water flowing through a water line will vary dramatically, because a larger water meter, like the Plaintiff's eight-inch meter, cannot accurately measure low water volumes. Within the compound meter assembly there exists a valve that closes when flow is low, forcing all water flow into the smaller, 4-inch meter; once the flow increases above a certain level, the valve opens, flow ceases

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to the 4-inch meter and is directed through the larger 8-inch meter. Exhibit 6, at p. 7. The Plaintiff's compound meter is able to meter all volumes of water flowing through its water line while permitting the volume to vary without the need for any action by the Plaintiff or Macedonia.

Macedonia has the authority to establish its own rates for water service and these rates are not subject to the approval of any regulatory authority. S.C. Code Ann. Section 33-36-280 (2006). Customers are billed a minimum base charge based upon the size of their water meter and a volumetric charge for all water used in excess of 2000 gallons each month. The minimum base charge for a four-inch meter is \$225 and \$650 for an eight-inch meter. Since 1999 Plaintiff has been billed a base rate of \$650 for his eight-inch meter.² Plaintiff contends that he should be billed a base rate of \$75 for the "two-inch" portion of his compound meter rather than \$650 for its eight-inch portion.³

III. GROUNDS FOR DEFENDANT'S MOTION

There are no genuine issues as to any material fact in this matter. Plaintiff and Defendant agree regarding the basic configuration of Plaintiff's compound meter and service line. The only matter that is left to the consideration of this Court is whether, due to its configuration, Plaintiff's compound meter falls within the definition of a "separate fire sprinkler line" so as to be subject to the limitations on fees and charges of Section 58-5-390. For the reasons provided for herein, this Court has determined that Plaintiff's compound meter does not constitute a separate fire

¹ In Plaintiff's Complaint and Macedonia's Answer, the by-pass line is stated to be a two-inch line, however, from discussions with Macedonia's staff and upon further review of the specifications on the meter, the by-pass line is actually a four-inch line.

² See Exhibit 1 to Macedonia's answer for a schedule of its current water rates.

³ As previously noted, Plaintiff misconstrued the size of his by-pass line, which is actually a 4-inch line. Macedonia's monthly base charge for a 4-inch meter is \$225.

sprinkler line as contemplated by Section 58-5-390. Since Section 58-5-390 is inapplicable to the Plaintiff, the fees charged by Macedonia to provide water service are valid.

IV. CONCLUSIONS OF LAW

A. Summary Judgment

Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Glover v. County of Charleston*, 361 S.C. 634 (2004). Since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chemical v. Allianz Underwriters*, 357 S.C. 631 (2004). Summary judgment is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute. *CEL Prods., LLC v. Rozelle*, 357 S.C. 125 (Ct. App. 2004). In determining whether summary judgment is proper, this court must view all evidence in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280 (Ct. App. 2001). Importantly, in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hutchinson v. Liberty Life Ins. Co.*, 393 S.C. 19, 24 (Ct. App. 2011). When plain, palpable, and indisputable facts exist to which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509 (Ct. App. 2004).

B. Interpretation of Section 58-5-390

Plaintiff complains that Macedonia's base rates, as applied to him, violate Section 58-5-390 because the base rate, which is calculated based upon the eight-inch portion of his compound meter, exceeds the actual cost associated with Plaintiff's water line to the system. S.C. Code Ann. Section 58-5-390(A). The basis of Plaintiff's claim rests entirely upon Macedonia's purported violation of Section 58-5-390. However, under a plain reading of this provision, Section 58-5-390 does not apply to the type of compound meter and dual-purpose water line that provides water service to Plaintiff's business.

Section 58-5-390 reads, in pertinent part, as follows:

(A) A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system.

(B) For purposes of this section, actual costs include direct labor, direct material, the necessity of increased capacity, and other direct charges associated with the separate fire sprinkler line. The direct costs must be documented by either an invoice or work order that specifically assigns the costs to the separate fire sprinkler line. Nothing in this section may be construed as requiring a utility to provide service to support a private fire protection system.

(emphasis supplied).

Section 58-5-390(B), clarifies that the "actual costs" in this under the statute are limited to those items that are associated with a "separate fire sprinkler line." Plaintiff does not have a separate fire sprinkler line. Plaintiff is served by a single dual-purpose water line that is metered by a compound meter. The use of a compound meter "is purely for improvement in the measurement of flow in the system and has no bearing on whether the water is used for fire sprinklers or other water consumption." Exhibit 6, at p. 7. Further, Plaintiff's compound meter has "no capability to differentiate between the volume of water consumed by the commercial

usage of the facility from the volume of water consumed by the fire sprinkler system." Exhibit 6 at p. 7. As a result, "[t]here is no separate metering of commercial water and the fire sprinkler consumption." Exhibit 6, at p. 11.

Plaintiff's own expert, Jeffery A. Walker, general manager of the Inman-Campobello Water District ("ICWD") upon review of the report prepared by Plaintiff's expert witness, provided a written statement, submitted at the hearing on the matter as Exhibit 7, stating that in his opinion "since all of the water for this customer flowed through this meter assembly, and therefore, was not a connection dedicated to fire protection only, the ICWD would not consider this a private fire protection line." Mr. Walker added, "[e]ven though the meter assembly is comprised of two meters, it is still considered an 8-inch meter." Exhibit 7.

Where the language in used in a statute is clear and unambiguous, this Court must rely upon its plain reading. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." (citations omitted)). It is unequivocal that Plaintiff does not maintain a "separate fire sprinkler line" as contemplated by Section 58-5-390; a plain reading of the clear and unambiguous language of this provision leads to the conclusion that its limitations on fees pertain only to separate fire sprinkler lines, not to single dual-purpose lines. Since Section 58-5-390 is not applicable, such statute cannot be further construed to limit the rates and fees that Macedonia may charge.

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V. CONCLUSION

This Court has found that Plaintiff has misconstrued S.C. Code Ann. Section 58-5-390, and as such, there is no genuine dispute of fact in this matter. This Court grants the Defendant's motion for summary judgment in this matter as to all of Plaintiff's causes of action and Plaintiff's claims against Defendants are dismissed with prejudice.

IT IS SO ORDERED.

Honorable R. Keith Kelly
Presiding Judge for the Seventh Judicial Circuit

Gaffney, South Carolina
January __, 2017

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Cherokee Common Pleas

Case Caption: Joey Lemmons, D/B/A , plaintiff, et al VS Macedonia Water Works, Inc.
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It is so Ordered.

s/ R. Keith Kelly - 2165

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