

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2017-001130

Tom Efland..... Appellant,

vs.

Randy L. Mills and Richland County..... Respondents.

INITIAL REPLY BRIEF

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NOV 29 2017
SC Court of Appeals

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENTS.....1

 I. THE ISSUES RAISED IN APPELLANT’S BRIEF WERE PRESERVED
 FOR APPEAL.....1

 II. THE APPELLANT DID ATTEMPT TO RAISE THE ISSUES
 CONTAINED IN HIS COUNTERCLAIM BEFORE THE COURT2

 III. THE LAW OF THE CASE DOES NOT BAR APPELLANT’S
 CLAIMS.....3

CONCLUSION.....3

TABLE OF AUTHORITIES

Cases

Elam v. S.C. Department of Transportation, 361 S.C. 9, 602 S.E. 2d. 776 (2004).....1

Hancock v. Wal-Mart Stores, Inc. 355 S.C. 168, 584 S.E.2d. 398 (Ct. App. 2003)....1

Statutes

Rule 59(e) South Carolina Rules of Civil Procedure.....1

ARGUMENT

I. THE ISSUES RAISED IN APPELLANT'S BRIEF WERE PRESERVED FOR APPEAL

Respondent argues that the Appellant failed to preserve the issues raised in his brief. This argument lacks merit. The issues raised by Appellant in his brief were ruled upon by the Trial Judge and are therefore preserved for appeal.

The Respondent moved for Judgment on the Pleadings on the grounds that all of the issues raised in the Appellant's Complaint had been fully adjudicated. (Respondent's Motion for Judgment on the Pleadings; R. ____). At the hearing before Judge Manning, Respondent reiterated this argument. In conclusion he informed the Court, "my motion is based on the issue of collateral estoppel, everything previously clearly litigated." (Transcript of January 5, 2017 hearing, Page 6, Lines 16-19; R. ____). In his Order granting Respondent's Motion for Judgment on the Pleadings, Judge Manning specifically based his Order on the legal grounds that the Appellant's lawsuit was barred by the doctrines of both Collateral Estoppel and Res Judicata. (Order of Judge Manning dated April 14, 2014; R. ____).

In his Brief, Appellant specifically argues that the Trial Court erred in granting the Respondent's Motion on the specific grounds of Collateral Estoppel and Res Judicata. Respondent argues that because Appellant did not file a Rule 59(e) motion, these issues are not preserved on appeal. A party must file a Rule 59(3) motion when an issue or argument has been raised, but not ruled upon in order to preserve it for appellate review. *Elam v. S.C. Department of Transportation*, 361 S.C. 9, 602 S.E. 2d. 776 (2004). An issue not addressed in the trial court's final order is not preserved if Appellant does not file a motion under Rule 59(e) seeking a ruling on the issue. *Hancock v. Wal-Mart Stores*,

Inc. 355 S.C. 168, 584 S.E.2d. 398 (Ct. App. 2003).

The Trial Judge heard arguments regarding claim and issue preclusion. The Respondent raised this issue again in his Reply Brief, filed with the Court after the hearing. (Respondent's Reply Memorandum; R. ____). Judge Manning specifically ruled on and addressed these issues in his Order. (Order of Judge Manning dated April 14, 2017; R. ____).

Appellant's brief, specifically arguments A and B, addresses the ruling of Judge Manning. The issues contained in arguments A and B were raised and ruled upon by the Trial Court. Contrary to the Respondent's argument, these are not issues that are being raised for the first time on appeal. These issues were preserved and the Respondent's argument to the contrary lacks merit and should be rejected by this Court.

II. THE APPELLANT DID ATTEMPT TO RAISE THE ISSUES CONTAINED IN HIS COUNTERCLAIM BEFORE THE COURT

The Respondent's argument that the Appellant's counterclaim in the 2008 case was compulsory ignores the fact that the Appellant has repeatedly attempted to have the issues raised in that counterclaim heard. Because of the incomplete relief granted by the arbitrator, the Respondent is still trying to have these matters heard and ruled upon.

The Respondent relies upon the language of the arbitrator's Order in his argument that the matters raised in Appellant's counterclaim were, in fact decided and ruled upon by the Arbitrator. This language does not support Respondent's arguments.

In reviewing the arbitrator's Order, it is clear that Attorney Todd did not rule on the matters raised by Appellant Efland's counterclaims. (Transcript p. 7, ll. 15-25; R. ____). Attorney Todd did not rule upon issues pertaining to the alleged nuisance. He did not rule upon the issues pertaining to trespass. He did not rule upon issues pertaining to

the driveway. (Award of Arbitrator; Exhibit F to Respondent's Answer; R. ____). It is clear from reviewing the language cited by the Respondent that this does not refer to these particular issues but instead is solely related to the alleged wrongful breach of the lease by Respondent. The issues raised by Appellant in his counterclaims against Respondent were not and never have been adjudicated.

III. THE LAW OF THE CASE DOES NOT BAR APPELLANT'S CLAIMS

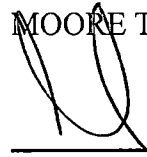
Finally the Law of the Case Doctrine does not bar the Appellant's appeal. Judge Benjamin only ruled on the Appellant's Motion to Remand. The Order did not adjudicate the claims of the Appellant in this case which were not decided by the arbitrator and which remain un-ruled upon and undecided. The Law of the Case Doctrine does not apply to the facts of this subsequent case. The Trial Court erred in applying this doctrine to the facts of this case

CONCLUSION

For the reasons set forth above and more fully in his Initial Brief, the Trial Court erred in granting Respondent's Motion for Judgment on the Pleadings/Motion to Dismiss. The Lower Court's Order should be reversed and this matter should be remanded to the Lower Court.

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November 27, 2017

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PROOF OF SERVICE

I certify that I have served the Appellant's Initial Reply Brief by mail, to Desa Ballard, Esquire, Ballard & Watson, Post Office Box 6338, West Columbia, SC 29171 and Mitchell Willoughby, Esquire, Willoughby & Hoefer, Post Office Box 8416, Columbia, SC 29202 on November 27, 2017.



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West Columbia, South Carolina
November 27, 2017

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Tom Efland v. Randy L. Mills and Richland County
C.A. No.: 2016-CP-40-05336
Appellate Case No. 2017-001130

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Dear Ms. Kitchings:

Enclosed please find enclosed an original and one copy of Appellant's Initial Reply Brief along with an original and a copy of Proof of Service on Respondent's counsel. Please file the originals and return the clocked copies to me in the enclosed self-addressed stamped envelope. Under cover of this letter I am serving counsel for respondent with a copy of the Initial Brief and Proof of Service.

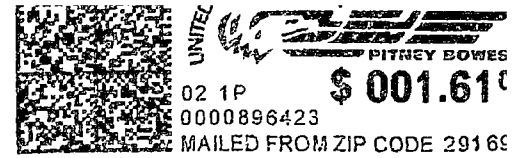
Thank you for your assistance in this matter.

Respectfully yours,


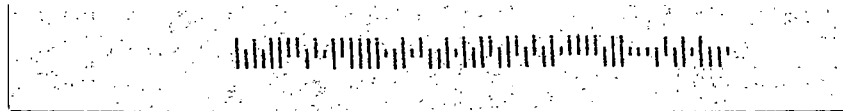
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Enclosures

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