

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. 2017-001267

William A. Brazell,
Individually and as Personal
Representative of the Estate of
Geneva J. Brazell, deceased,

Appellant,

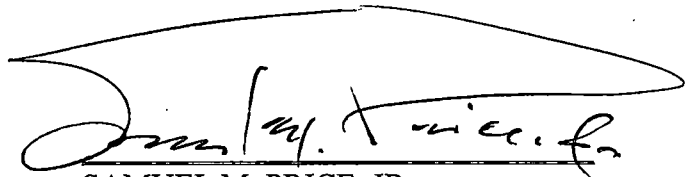
v.

Judith D. Haley,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

January 10, 2018



SAMUEL M. PRICE, JR.
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TABLE OF AUTHORITIES

CASES

No new authorities quoted in this Initial Reply Brief.

IN RESPONSE TO STATEMENT OF THE CASE

Respondent stated “Appellant, at no time, filed a Complaint in the Court of Common Pleas, or otherwise, for breach of contract.” (Page 2 of Respondent’s Brief) Paragraph 3 of the Complaint states, “That this is an action to terminate a Contract or in the alternative to foreclose on a constructive or equitable mortgage. . .” (R. 231) On page 235 in the Record on Appeal, in the prayer of the Complaint, it is stated “(a) For an Order of this Court determining that defendant has breached the Contract to purchase and has no further rights and/or equity in the real estate.”

Respondent claims “Appellant did, however, erroneously, file a Complaint for Eviction in Magistrate’s Court, and was sternly advised by the judge that this was not the proper venue, and that he should research the process.” (Page 2 of Respondent’s Brief) It is true that an action was filed for an eviction in Magistrate’s Court. When respondent told the Magistrate that she had a contract, the Magistrate simply dismissed the case but he did not sternly advise any party on any issues.

Respondent claims that “Appellant at no time filed any documents to seek a court order determining that the contract created a constructive mortgage and/or equitable mortgage.” (Page 2 of Respondent’s Brief) In paragraph 3 of the Complaint (R. 231-235) and in the prayer of the Complaint (c) appellant expressly seeks foreclosure of a constructive mortgage or equitable mortgage.

Respondent’s allegations claiming that appellant’s brief contains “voluminous documents that are irrelevant to this appeal” (Page 3 of Respondent’s Brief) are denied.

Respondent claims that she was not sent a copy of Appellant’s Designation of Matter

with the Initial Brief of Appellant. A copy of the Designation of Matter was included with the Initial Brief of Appellant which was served upon Respondent by mail on August 21, 2017.

IN RESPONSE TO RESPONDENT'S FACTS OF THE CASE

There are two (2) properties involved in this case. One is 2428 Heyward Brockington Road which is a residential property and 2426 Heyward Brockington Road which is adjacent property in the rear.

Respondent claims that "The probate of Geneva J. Brazell has not even been filed . . ." (Page 3 of Respondent's Brief) Geneva Jackson Brazell died on February 1, 2015. Her son, William A. Brazell, was appointed Personal Representative on May 21, 2015. See Estate File number 2015ES3600187.

On page 4 of Respondent's Brief, respondent discusses payments. Respondent claims that she has proof of payment through bank records. On page 122 of the Record, Appellant alleges that he has received a total of \$2,760.00 which includes the April 9, 2014, payment of \$1,500.00. This is all that Respondent has paid. If there is proof of further payment, Appellant would seek proof thereof.

IN RESPONSE TO ARGUMENT

(1) Whether or not an email can be considered a motion for continuance has been fully argued in the Brief of Appellant.

"(2) ... that appellant tried to undermine respondent and communicate ex-parte with the court and the judge, which is not in compliance with SCRCF." (Page 5 of Respondent's Brief) Attorney for appellant only communicated with the Administrative Assistant related to procedural issues and never discussed the matter with the Court on any merits.

“(3) At no time, has appellant filed any document with the court for ‘Breach of Contract’.” . . . (Page 5 of Respondent’s Brief) Appellant alleged that on April 9, 2014, a contract was signed with Judith D. Haley and Michael D. Haley as tenants and/or purchasers. Paragraph 5 of the Complaint (R. 232-233), paragraph 6 states that as of July 9, 2016, respondent owes 28 monthly payments due in amount of \$14,000.00. (R. 233) It is also alleged that defendant paid Richland County property taxes for 2012 and 2013. Part of the Contract for purchase was that respondent would pay the Richland County ad valorem property taxes. (R. 141 paragraph 7) Upon information and belief, she paid the taxes for 2012 and 2013. The 2014 taxes were paid by appellant. 2015 taxes were paid by appellant’s son Michael Brazell. A friend of appellant has paid the 2016 taxes.

Under the contract to purchase, respondent was to purchase hazard insurance and keep the property insured. (R. 141 paragraph 7) Upon information and belief, hazard insurance has never been purchased.

(4) Respondent claims to own the property by way of Contract. (Page 6 of Respondent’s Brief) The point should be made is that appellant believed that respondent would pay the purchase price in full at some point and time in a closing. It is stated in part in paragraph 2 of the contract that “Once BUYERS have paid \$9,000 to SELLER, SELLER will transfer the Deed at 2426 into the name of BUYERS, along with ingress and egress rights on 2428.” (R. 111) Appellant believed there would also be a payment in the amount of \$90,100 less any credits at closing at the time the Deed was signed. Respondent claims that the \$90,100 less credits would be paid over a period of years at the rate of \$1,500 per quarter “At the then prevailing interest rate.” (R. 111 p. 1) It should be noted that the various contracts, including the final contract,

were prepared by respondent. If there are any ambiguities, of course, the law in South Carolina that such ambiguities would be interpreted against the party that drew the contract.

CONCLUSION

That respondent's adult son Jared Miller moved into subject real estate in November of 2013. No money was paid to appellant until on or about April 9, 2014.

April 9, 2014	\$1,500.00	for payment
Uncertain	\$800.00	reimburse appellant for taxes and insurance
Uncertain	\$105.00	reimburse appellant for taxes and insurance
Uncertain	\$130.00	purchases at Wal-Mart for appellant's benefit
Uncertain	\$225.00	for electrical utilities bill for appellant
For a total of \$2,760.00.		

Respondent was required to pay Richland County ad valorem property taxes. She paid the 2012 taxes and the 2013 taxes as follows:

11/19/13	2012 Richland County taxes-2428 Heyward Brockington	\$675.94
11/19/13	2012 Richland County taxes-2426 Heyward Brockington	\$204.72
10/20/14	2013 Richland County taxes-2428 Heyward Brockington	\$689.11
10/20/14	2013 Richland County taxes-2426 Heyward Brockington	\$212.62
Total		\$1,782.39

The 2014 taxes were paid by appellants. The 2015 taxes were paid by appellant's son Michael Brazell. The 2016 taxes were paid by a friend of appellant but not paid by respondent.

Respondent was required to pay hazard insurance premiums which she has not done. There was a leak in the roof the summer of 2014. Appellant had agreed to repair the roof with the proceeds of appellant's hazard insurance claim. Respondent has prevented appellant access. Therefore, appellant could not make the roof repairs. There was no homeowners insurance for the flood of October 2015.

If respondent has been stockpiling the \$1,500 per quarter that she owes appellant, she has

never mentioned that to appellant or his attorney.

January 10, 2018

Respectfully submitted,

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APPEAL FROM RICHLAND COUNTY
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Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-04639

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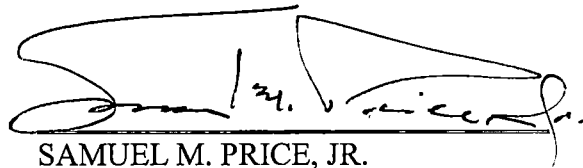
Judith D. Haley,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on Judith D. Haley by depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2018, addressed to her at 2428 Heyward Brockington Road, Columbia, South Carolina 29203.

January 10, 2018



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