

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-2444
Appellate Case No. 2017-001221

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SC Court of Appeals

Stow Away Storage, LLC and
MSC MTP, LLC,

Appellants,

v.

George W. Sisson, 4.0, LLC,
The Sisson Foundation Limited
Partnership, Sweetgrass Hardware,
Inc., and Timarand, Inc.,

Respondents.

APPELLANTS' INITIAL REPLY BRIEF

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TABLE OF CONTENTS

Table of Authorities.....ii

Arguments in Reply to Respondents’ Brief

 I. The principal of equitable indemnity may properly be applied to the facts of this case, and the Trial Court’s decision should be reversed accordingly.....1

 II. This Court should reverse the Trial Court’s judgment so as to allow Stow Away to recover punitive damages against Sweetgrass for its tortious interference with the easement agreement between Stow Away and Sisson.....4

 III. This Court should reverse the Trial Court’s judgment to allow Stow Away to recover the value of the rent of the easement.....5

Conclusion..... 6

TABLE OF AUTHORITIES

South Carolina Cases:

| | |
|---|-----|
| <i>Addy v. Bolton</i> , 277 S.C. 28, 183 S.E.2d 708 (1971)..... | 2-3 |
| <i>Briarcliffe Acres v. Briarcliffe Realty Co.</i> , 262 S.C. 599, 206 S.E.2d 886 (1974)..... | 4 |
| <i>Baron Data Syst., Inc. v. Loter</i> , 297 S.C. 382, 377 S.E.2d 296 (1989)..... | 1 |
| <i>Rhett v. Gray</i> , 401 S.C. 478, 736 S.E.2d.873 (Ct. App. 2013)..... | 2-3 |
| <i>Town of Winnsboro v. Wiedmann-Singleton, Inc.</i> , 307 S.C. 128, 414 S.E.2d 118 (1992)..... | 2-3 |

IN REPLY TO RESPONDENTS' BRIEF:

This easement dispute concerns three actors: (1) Appellant Stow Away Storage, which owned the servient estate, over which ran an appurtenant easement belonging to (2) the Respondent Sisson, who accessed his property (the dominant estate) by means of the easement, and who—in breach of his easement agreement with Stow Away—granted a license to (3) the Respondent Sweetgrass Hardware, Inc., which was located on a non-appurtenant parcel, and which sought to allow its 300 customers a day to cross the easement by virtue of its—illegal—license agreement with Sisson. The facts of the case are undisputed, having been stipulated at trial, and this Court may review the decision of the Circuit Court *de novo*.

I. It would be proper to apply the principal of equitable indemnity to the facts of this case, and this Court should reverse the Trial Court's decision accordingly.

It is true that the general rule is that there is ordinarily no right to recover attorney's fees in the absence of a provision therefor by contract or statute. *Baron Data Syst., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). However, the common law doctrine of equitable indemnity allows for the award of attorney's fees in cases such as the one at hand. Despite Respondents' claim to the contrary, Appellant Stow Away indeed brought a cause of action for "Equitable Indemnity" against Respondent Sisson, alleging that his actions were "in breach of the contract between Stow Away and Sisson and have placed Stow Away in such relationship with Sweetgrass and its customers as makes it necessary for Stow Away to incur expenses including, but not limited to, attorney's fees and costs to protect its interests..." (Complaint, pp. 11-13). This Court should reverse the Trial Court's judgment, because Respondent Sisson is equitably obligated to indemnify Stow Away for the attorney's fees which it incurred in protecting its property interest against a third party, as a natural consequence of Sisson's breach of contract.

Both the Respondents, in their Brief, and the Circuit Court, in its Order, improperly cite *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d.873 (Ct. App. 2013), for the proposition that attorney’s fees are not allowable in an easement dispute. (*Order on Damages*, 3/22/17, p. 5; *see also* Respondents’ Initial Brief pp. 13-16). However, the Court of Appeals made no such blanket holding in *Rhett*. Instead, Judge Konduros, writing for the majority of the Court of Appeals, compared the facts of that particular case with prior Supreme Court case law in order to find that the theory of implied indemnity did not apply to the lawsuit between the two parties that were involved in that case. *Rhett* at 883-884.

In *Rhett v. Gray*, the Court of Appeals did cite the following holding by the Supreme Court: “It is generally held that where the wrongful act of the defendant has involved the plaintiff in litigation with others or placed him in such a relation with others as makes it necessary to incur expenses to protect his interest, such costs and expenses, including attorney’s fees, should be treated as the legal consequences of the original wrongful act and may be recovered as damages.” *Id.* at 883, quoting *Addy v. Bolton*, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971).

Furthermore, the *Rhett* Court quoted, “[i]n order to recover attorneys’ fees under this principle, the plaintiff must show: (1) that the plaintiff has become involved in a legal dispute either because of a breach of contract by the defendant or because of the defendant’s tortious conduct; (2) that the dispute was with a third party—not with the defendant; and (3) that the plaintiff incurred attorneys’ fees connected with the dispute.” *Id.* at 883-884, quoting *Addy* at 33, 709-10 (emphasis added). Upon considering the particular facts of *Rhett v. Gray*, which involved an easement dispute between two parties—Rhett, the owner of the dominant estate, and Gray, the owner of the servient estate—the Court of Appeals held that the circumstances did not meet the criteria for equitable indemnity. *Id.* However, the dispute between Stow Away and Sisson does

meet all three of the Supreme Court's criteria: (1) Stow Away became involved in a legal dispute because of Sisson's breach of contract; (2) Stow Away's dispute was with a third party (i.e. Sweetgrass); and (3) Stow Away incurred attorneys' fees connected with that dispute.

The *Rhett* Court also quoted the Supreme Court's language in *Town of Winnsboro v. Wiedmann-Singleton, Inc.*, which noted that a special relationship must exist to sustain a claim for equitable indemnity, and that such requirement is properly met "when the at-fault party's negligence or breach of contract is directed at the non-faulting party and the non-faulting party incurs attorney fees and costs in defending itself against the other's conduct." *Rhett v. Gray*, at 884, quoting *Winnsboro*, 307 S.C. 128 at 132, 414 S.E.2d 118 at 121 (1992). The facts of the case involved in this appeal perfectly align with the Supreme Court's requirements: Sisson was at fault in breaching his easement agreement with Stow Away. His breach of contract was directed at Stow Away in that he sought to allow Sweetgrass, a party outside the contemplation of the contract, to access a non-appurtenant parcel over Stow Away's property. And Stow Away incurred attorneys' fees in defending itself against the 300 daily new users unduly burdening the servient estate because of Sisson's breach.

"If the attorneys' fees were incurred as a result of a breach of contract between plaintiff and defendant, the defendant will be deemed to have contemplated that his breach might cause plaintiff to seek legal services in his dispute with the third party." *Addy v. Bolton*, 257 S.C. at 33, 183 S.E.2d at 709 (quoted by *Rhett v. Gray* at 884). Sisson is equitably bound to indemnify Stow Away for the attorneys' fees it incurred in bringing a suit to defend its property against Sweetgrass, and the Trial Court's Order should be reversed accordingly. "Recovery is allowed when as a result of defendant's breach of contract or tortious activity the plaintiff is required to either defend itself or bring an action against a third party." *Winnsboro* at 132, 121 (emphasis added).

II. This Court should reverse the trial court’s judgment so as to allow Stow Away to recover punitive damages against Sweetgrass for its tortious interference with the easement agreement between Stow Away and Sisson.

Both the Trial Court and the Respondents, in their brief, maintain that “the Defendants were acting on their interpretation of the easement and the License Agreement without any willful, wanton, or reckless actions on their part.” (*Order on Damages*, 3/22/17, p.4; Respondents’ Initial Brief, pp.16-17). However, the facts of the case—as stipulated by the parties—reveal the error of this holding, as delineated in the Appellant’s Initial Brief. In fact, the Respondents’ interpretation of the easement agreement and their attempt to supervene that agreement by drafting a license were patently in violation of the established law of easements and licenses, and, as such, are additional evidence of their reckless disregard for the property rights of Stow Away.

The easement agreement is on its face described as an “Access Easement for Sissons Property,” and grants an appurtenant easement, burdening Stow Away’s property and benefiting Sisson. (Complaint, Exhibit 2). It is hornbook law that an appurtenant easement concerns two estates: servient and dominant, and that it cannot be extended beyond the dominant estate. Yet, that is exactly what Sisson and Sweetgrass attempted to do, by drafting a License Agreement that purported to allow Sweetgrass customers to cross the servient estate to access an unrelated parcel. But license agreements, by their very nature, are personal to the holder and unassignable; they simply cannot be extended by the holder to 300 customers a day for six years. *See Briarcliffe Acres v. Briarcliffe Realty Co.*, 262 S.C. 599 at 615, 206 S.E.2d 886 at 894-895 (1974) (citing 25 Am.Jur.2d *Easements and Licenses* § 123 (1966) for the proposition that licenses by definition are personal and not assignable). Furthermore, the very terms of the License Agreement, in paragraph 10, state that it is non-transferrable and cannot be assigned or given to any third party. (See *License Agreement*).

Sweetgrass acted willfully, with consciousness of its wrongdoing, and with reckless disregard for Stow Away's property and contract rights. Therefore, punitive damages are warranted, and the Order of the Trial Court should be reversed so as to award them.

III. This Court should reverse the Trial Court's judgment to allow Stow Away to recover the value of the rent of the easement.

Respondents claim that this case does not arise out of a breach of contract. (Respondents' Initial Brief, p. 17). However, in its Complaint, Stow Away alleges that "the actions of Sisson individually and through 4.0 LLC and Sisson Foundation are in breach of the contract between Stow Away and Sisson" and prays for "judgment against Sweetgrass for actual and punitive damages" and "judgment against Sisson...and Sweetgrass for all... costs and expenses incurred in protecting its rights under the terms of the Access Easement and Abandonment of Encroachment Permit." (Complaint, p. 11 ¶ 40; p. 12 ¶5; p. 13 ¶ 7).

Furthermore, the Trial Court held that the Respondents' actions were "in violation of the Easement Agreement between [Stow Away] and [Sisson] and the law of South Carolina." (Order of Judge Nicholson, 11/22/13, p. 11). In light of this holding, and for the reasons stated in the Appellants' Initial Brief, actual damages (including but not limited to lost rent) are proper.

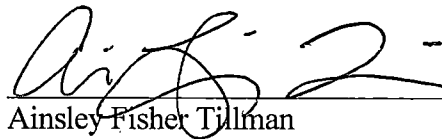
CONCLUSION

The Trial Court's *Order on Damages* should be reversed so as to award the attorneys' fees accumulated by Stow Away over the course of seven years of litigation in defending its property and contract rights against access by a party outside the contemplation of the easement agreement entered into by Stow Away and Sisson. Furthermore, the Trial Court's Order should be reversed to provide punitive damages against Sweetgrass Hardware, which willfully, recklessly, and in conscious violation of hornbook law, allowed 300 customers a day to cross Stow Away's property, over its many objections. Finally, the Trial Court's Order should be reversed to allow Stow Away

to recover the fair market value of the diminution in property value that it suffered over the course of the 68 months that the Respondents used the easement without recompense.

For the reasons set forth above and in their Initial Brief, Appellants pray for the relief requested herein.

Respectfully submitted,



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January 8, 2018

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
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Re: *Stow Away Storage, et al. v. George W. Sisson, et. al.*
Appellate Case No. 2017-001221

Dear Ms. Kitchings,

Enclosed for filing, please find the *Appellants' Initial Reply Brief* in the above-referenced matter.

Thank you for your assistance, and please do not hesitate to contact me if you should have any questions.

Yours very truly,



Ainsley F. Tillman
Attorney for Appellants

Enclosure

cc: G. Hamlin O'Kelley, III, Esquire
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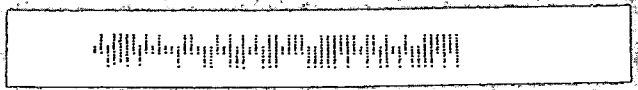
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