

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 John Steven Goodwin, Louise C.)
 Goodwin, Gary E. Owens and)
 Joyce M. Owens,)
)
 Plaintiffs,)
)
 vs.)
)
 Ronald L. Charlton, Bonnie N.)
 Charlton, James R. Charlton and)
 Bayside Property, Inc.)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NUMBER 2009-CP-22-01045

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 SC Court of Appeals

Order Denying Motion for Reconsideration

This matter came before me on March 2, 2018 and is before me pursuant to a Rule 59(e) of the South Carolina Rules of Civil Procedure (hereafter "SCRCP") motion filed by the Plaintiffs directed at the Order of this Court filed October 12, 2017, which granted summary judgment to the Defendants, Ronald L. Charlton, Ronald J. Charlton, Bonnie N. Charlton and Bayside Property, LLC (hereafter the "Charlton Defendants"). Present at this hearing were K. Douglas Thornton, John M. Leiter, attorneys for the Plaintiffs and Robert W. Maring, attorney for the Charlton Defendants.

The Plaintiffs filed a Summons and Complaint on July 9, 2009 in the Court of Common Pleas for Georgetown County against the Defendants Charlton. All Defendants except the Defendants Charlton have been dismissed as Defendants. The Plaintiffs originally consisted of twenty-one (21) Plaintiffs and John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens are the remaining Plaintiffs, who chose to continue the litigation. The Complaint alleged twelve (12) causes of action. The Defendants Charlton timely filed and served their Answer and Counterclaims to which the Plaintiffs timely filed and served their Reply.

EXH. A

The Plaintiffs' Rule 59(e), SCRC Motion, contends that this Court allowed the Charlton Defendants to violate Rule 7(b)(1), SCRC, and the Administrative Order of Chief Justice Toal dated September 10, 2015. This Court and the Plaintiffs were able to discern the grounds for the Charlton Defendants Rule 56, Motion for Summary Judgment as shown by their lengthy Memorandum In Opposition to the Charlton Defendants Motion and the extensive argument of counsel and accordingly I find that the requirements of Rule 56, SCRC, have been met.

Chief Justice Toal's Order dated September 10, 2015, implemented a pilot program under which motions could be decided more expediently and without a hearing. However, the pilot program does not apply to dispositive motions and, therefore, does not apply to the Charlton Defendants' motion for summary judgment.¹

The Plaintiffs claim that they did not have sufficient time to respond before the motion hearing date. Despite the Plaintiff's claims to the contrary, the Plaintiffs filed a very lengthy and thorough Memorandum in Opposition to the Defendants Charltons' Motion for Summary Judgment together with numerous citations and excerpts from depositions. The excerpts that the Plaintiffs deemed to be pertinent were attached to their Memorandum. The Plaintiffs were given every opportunity to argue any points of law and every fact that they deemed to be in issue.

The Parties at the Summary Judgment Motion hearing informed the Court that the essential element of the Plaintiffs' causes of action was the existence of a joint venture or partnership between the Charlton Defendants and the Defendants Corkum, South Bay Properties, LLC and Landquest Development, LLC, (hereafter the "Corkum Defendants"). Now the Plaintiffs assert that the conspiracy cause of action is not dependent on the joint venture relationship. This is inconsistent with what was previously stated to the Court.

¹ In practice, the pilot program created by Justice Toal's order has never been implemented in the 15th circuit as all motions that otherwise require a hearing are scheduled for hearing.

For the Charlton Defendants to be liable for the acts and/or omissions of the Corkum Defendants, a joint venture or partnership was essential. The Plaintiffs have characterized the relationship as a joint venture therefore for the sake of consistency this Court will use the Plaintiffs' term. The difference between a joint venture and a partnership is that a joint venture relates to a single transaction and a partnership is for the conduct of a general business of a particular kind. Welling, et al. v. Crosland, et al., 129 S.C. 127, 123 S.E. 776,781 Section 33-41-220 of the Code of Laws of South Carolina sets forth the rules for determining whether a partnership exists. Section 33-41-220(4) provides as follows:

The receipt by a person of a share of profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment

(a) As a debt by installments or otherwise.

In this case, the Charlton Defendants and the Corkum Defendants agreed that the Charlton Defendants would sell 79.62 acres to the Defendant South Bay Properties, LLC pursuant to the terms of a purchase and sales agreement and the amendments thereto. The Charlton Defendants sold the real property to the Defendant South Bay Properties, LLC which was a Corkum Defendant. The Charlton Defendants financed the purchase price and received a promissory note secured by a purchase money mortgage. It was at the time of this sale that the Charlton Defendants earned a profit or loss. There were no facts presented or evidence presented by the Plaintiffs or known to the Plaintiffs from which one can discern a scintilla of evidence that the Charlton Defendants had any right to share in the profits and losses of the Defendant South Bay Properties, LLC or any Corkum Defendant, had any community of interest in the capital or property of the Defendant South Bay Properties, LLC or any Corkum Defendant and had any community of interest in the control or management of the Defendant South Bay Properties, LLC

or any Corkum Defendant. Stephens v. Stephens, 213 S.C. 525, 50b S.E. 2d 577 (1948) which expounded on the law of partnerships from the time of Chancellor Kent. (see also Terry v. Brashier, 207 S.C. 639, 207 S.E. 2d 82 (S.C., 1974)) The Charlton Defendants profit or loss was not dependent on the sale of Lots 160 and 94 to the Plaintiffs by the Defendant South Bay Property, LLC or any Corkum Defendant. The Plaintiffs' position would require the jury to rewrite the law of partnerships which is the province of the legislature and dictating legislative policy is something a jury is powerless to do. Section 33-41-220 (4)(a) is clear in its terms that no inference arises from the receipt of funds as payment of a debt.

The Plaintiffs argue that the Charlton Defendants and the Corkum Defendants further negotiations after the original contract was executed provides the scintilla of evidence of a partnership to defeat the Summary Judgment Motion. The Parties to any contract have the right to further negotiations and amendments to the contract particularly when the contract is the purchase and sale of real estate. All of the actions by the Charlton Defendants with respect to the Corkum Defendants took place prior to or at the closing of the Contract to Purchase and Sell Real Estate other than collect the agreed upon payoff as the Corkum Defendants closed the sale of lots. There were no facts or evidence that the Charlton Defendants played any role in the contract that the Defendant South Bay Properties, LLC entered into with any Plaintiff or played any role in the closing of those contracts. Neither the Charlton Defendants nor the Plaintiffs had ever met or had any discussions until many months after the Plaintiffs purchased their respective lots.

This is not a case where there are conflicting facts. The Plaintiffs have produced no facts or evidence either directly or inferentially that the Charlton Defendants:

1. Had any right to share in the profits and losses of any Corkum Defendant or any joint venture relevant to this action;
2. Had any right community of interest in the management and control of the Corkum Defendants or any joint venture relevant to this action;
3. Had any community of interest in any capital and property of the Corkum Defendants or any joint venture relevant to this action.

The Plaintiffs have raised for the first-time issues of the biased nature of the deposed witnesses, Kenneth L. Mitchum and Ronald L. Charlton. The Court cannot consider matters which are raised first in a Rule 59(e) Motion hearing and not at the Summary Judgment Motion hearing. Even if the Court could consider a matter first raised at the Rule 59(e) hearing, the bias of a witness cannot be considered by this Court at a Summary Judgment Motion hearing. Willis v. Wu, 262 S.C. 146, 607 S.E.2d 63 (2004). This Court is concerned with the presence or absence of evidence or facts and the inferences to be drawn from them not the credibility of the witnesses. The Plaintiffs have not argued that these witnesses would not be allowed to testify at a trial and their testimony is preserved here because the Plaintiffs and not the Charlton Defendants took their depositions.

The Plaintiffs have tried to weave a lender liability theory into the argument of the Rule 59(e) Motion. That argument is misplaced. The Charlton defendants were not involved in the financing related to the Plaintiffs. While the Court cannot consider new matters for the first time at a Rule 59 (e) Motion hearing. Bank of N.Y. v. Sumter County, 387 S.C. 147, 691 S.E.2d 473 (2010). Even if this Court could consider this issue, the case of Gecy v. South Carolina Bank and Trust, et al., Opinion No. 5538, S.C. Court of Appeals, decided February 21, 2018, recently held that the Bank had to have had a duty to the allegedly aggrieved party to maintain an action

against a lender. The Charlton Defendants were merely lenders in this scenario the same as the South Carolina Bank and Trust in the aforesaid case. Under the theory of lender liability, if it existed, would not create a cause of action to the Plaintiffs because there was not a lender borrower relationship between the Plaintiffs and the Charlton Defendants and accordingly no duty could be established. Even if it was proper for the Court to consider that argument, the Plaintiffs would not prevail.

The Plaintiffs for the first time argued in their Memorandum that the cause of action for civil conspiracy is not dependent on the existence of a joint venture. A civil conspiracy is dependent on the following: (1) a combination of two or more persons, (2) for the purpose of injuring the Plaintiff, and (3) that causes the Plaintiffs some special damage. Vaught v. Waites, 300 S.C. 20, 387 S.E. 2d 91 (Ct. App. 1989). The Plaintiffs pleadings do not contain any additional facts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the Complaint. The failure to plead such facts will merit the dismissal of the claim. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E. 2d 607 (1981). The Plaintiffs have produced no facts or evidence that the plaintiffs suffered any special damages as a result of any conspiracy. Likewise, the Plaintiffs have produced no facts or evidence or a scintilla of facts or evidence that one could infer that a conspiracy existed. Mere restatement of alleged wrongful acts contained in the other causes of action are insufficient to maintain a cause of action based on conspiracy.

The Plaintiffs have failed to produce any relevant facts or evidence whereby one could infer any facts or evidence supporting the causes of action against the Charlton Defendants. The facts and evidence presented do not provide a scintilla of facts or evidence to support the existence of a joint venture or partnership between the Charlton Defendants and the Corkum

Defendants. There are numerous facts and evidence to the contrary and an absence of facts or evidence to support the Plaintiffs' causes of action. This Court has reviewed all ambiguities, conclusions and inferences in a light most favorable to the Plaintiffs, the non-moving party in the motion for summary judgment. The Court's obligation and duty is to find and so finds that as a matter of law the Charlton defendants are entitled to judgment. Rule 56 of the SCRCP and M & M Grp., Inc. v. Holmes, 379 S.C. 468, 666 S.E.2d 262 (Ct. App. 2008).

This Court has considered the extensive Memoranda with attachments provided by the Parties, the extensive arguments of counsel, the pleadings, the relevant statutes and case law. After review of these items, this Court can find no reason to alter or amend its prior Order filed October 12, 2017, and it is

Ordered that the Plaintiffs' Motion to Alter or Amend its Order Granting Summary Judgment filed October 12, 2017 to the Charlton Defendants is denied.

AND IT IS SO ORDERED.

March ____, 2018

Benjamin H. Culbertson
Presiding Judge of the Court of Common Pleas



Georgetown Common Pleas

Case Caption: John Steven Goodwin , plaintiff, et al VS Ronald L Charlton ,
defendant, et al
Case Number: 2009CP2201045
Type: Order/Other

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148

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