

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Case No. 2011-CP-32-1781

Appellant Case No. 2015-002048

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JUN 01 2018
SC Court of Appeals

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellants,

v.

Marjorie E. Temple.....Respondent.

APPELLANTS' INITIAL REPLY BRIEF

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STATUTES

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Argument

I. The Master- in- Equity Erred in Failing to Award Attorney Fees Which Were Specifically Provided for in the Parties' Contract in the Event of an Action to Enforce its Provisions, Including Termination. Attorney Fees are Recoverable in an Action for Injunctive Relief if there is a Contract or Statute Which Permits Recovery.

The Respondent, Marjorie Temple, totally misapprehends or ignores the fact that the master did not foreclose on the property which is the subject of this action and the Respondent's, as well as the master's, analogy to a foreclosure action is irrelevant to the question of whether attorney fees could be awarded. The right to recover attorney fees in the enforcement of the contract were specifically provided for in the parties' contract and requested in the pleadings (Agreement at p. 6- " Purchaser agrees to pay all costs and expenses, including a reasonable sum as attorney fees incurred by the Seller in terminating Purchaser's rights under this Agreement or claims to the property enforcing the terms of this Agreement..."). The Complaint requested attorney fees in the Complaint at ¶ 8 and Plaintiffs incorporated that request in their Cause of Action for Termination (Complaint ¶ 10). The prayer for relief asked for attorney fees and for the Court to declare what amount of attorney fees and costs were due (Complaint, pp. 3-4). Rule 8(f), SCRCP requires the court to construe pleadings in a manner "as to do substantial justice to all parties."

Neither Temple nor the master have cited to any appellate case (or trial court order) which holds that attorney fees cannot be recovered in an action to terminate an installment sale contract where the underlying contract provides for the recovery of

attorney fees. Therefore, the master's denial of an attorney fee award should be reversed.

II. The Master Impaired the Parties' Contract by Finding That Plaintiffs Were Entitled to Attorney Fees But Did Not Award Them in Conjunction with Terminating the Contract Because They Could Only Be Awarded as Part of the Debt, and Not as a Separate Award. This Finding Violates the South Carolina and U.S. Constitutions.

The Respondent, Temple, argues that Strickland did not raise the issue of impairment of the parties' contract timely and attempted to raise it for the first time in his Motion for Reconsideration. The fact of the matter is that the issue regarding impairment of the contract was raised, and raised timely, at the hearing on Plaintiff's Rule 11 Motion and request for attorney fees. (Hearing Tr., p. 54, December 11, 2014):

I don't think see how any contract that provides for recovery of attorney fees and the right to recover attorney fees for the enforcement of the contract can be set aside by the Court. The parties have a free right to contract. And the court is not free to impair the contract.

(Id. Strickland's counsel, Hearing Transcript at p. 54, Dec. 11, 2014)

And so the argument that the issue of impairment was not timely raised is simply not supported by the record.

III. The Master Erred in Failing to Grant Rule 11 Sanctions Against the Defendants and Her Counsel Because There Were No Good Grounds for Bringing and Litigating the Defenses and Counterclaims of Fraud, Misrepresentation, Rescission, Unconscionability, and Unfair Trade Practices. The Circuit Court Found That There was No Basis in Fact or Law for Bringing These Claims. Therefore, Sanctions Should Have Been Entered.

In her brief at p. 4, the Respondent, Temple argues that the Appellants have not cited any case in which the failure to impose sanctions by a trial court was reversed by an appellate court, the implication being that there are no such cases. This is simply not correct. In the case of *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), a motorist who was struck from behind in a rear-end collision sued the following motorist, who admitted liability. After refusing to exclude from evidence defendant's surveillance videotape of plaintiff engaging in physical activity, which defendant had failed to disclose during discovery, the trial judge entered judgment on a jury verdict for defendant. Plaintiff appealed, and the Court of Appeals held that: (1) the videotape was relevant and discoverable, and (2) the trial court's sanction of refusing to allow defendant's investigator to comment on videotape was inadequate and warranted a new trial.

In this case, the master simply refused to enter sanctions in a case where there was a flagrant abuse of the litigation process- the continued assertion of counterclaims for which there was no basis. The evidence is manifestly clear that no good grounds existed to bring or assert the counterclaims that were raised. The master's findings are simply without evidentiary support. And the master does not address anywhere in his order what evidence or facts supported the defendant's counterclaims and, in fact, there is none. An abuse of discretion occurs when the trial court's order is controlled by an error of law or where there is no evidentiary support for the trial court's factual conclusions. *Sundown Operating Co. v. Intedge Industry, Inc.* 383 S.C. 01, 681 S.E. 2d 885 (2009).

Here, the master's findings are controlled by both legal error and lack of evidentiary support because the Order denying attorney fees fails to address what the circuit court found, which is that there was no basis in fact or law to have brought the counterclaims, which Respondent pled. The notion that there was any basis for suing on claims of non-disclosure relating to the existence of a damn and pond, which were open and obvious and which were disclosed in writing to an educated woman, is beyond the pale. The master here simply did not exercise any discretion as to the facts at hand – or whether there was any factual basis for the Respondent's counterclaims- he simply ignored them.

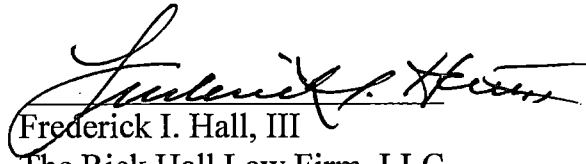
A failure to exercise discretion amounts to an abuse of that discretion. *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (“When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”); *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (Ct.App.1990) (quoting *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) (“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”)).

Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997)

Conclusion

For all of the reasons set forth in their Brief and this Reply, the Court of Appeals should determine that Rule 11 Sanctions and an award of attorney fees should have been granted as the counterclaims asserted by the Respondent in the lower court had no basis in fact or law, and served only to delay the right of the Appellant to have regained possession of their property. To have allowed the prosecution of patently frivolous counterclaims on this record without sanctions undermines the entire judicial process.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Frederick I. Hall, III". The signature is written in black ink and is positioned above the printed name.

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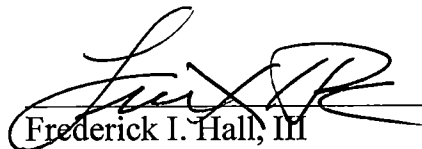
Marjorie E. Temple.....Respondent,

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief by depositing a copy of it in the U.S. Mail, postage prepaid, on 5-29, 2018, addressed to her attorneys of record, S. Andrew Syrett and Rolland E. Greenburg, III at the addresses listed below:

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May 29, 2018

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
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**RE: Charles E. Strickland, III, Latisha D. Strickland and Justin
Dillon, Appellants vs. Marjorie E. Temple, Respondent
Appellate Case No. 2015-002048**

Dear Ms. Kitchings:

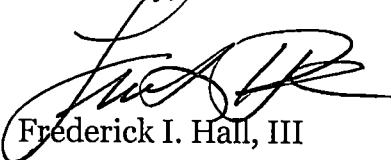
Enclosed for filing please find the original and one (1) copy of Appellants' Initial Reply Brief regarding the above referenced matter.

Please have one of your staff file the original and return the clocked in copy to our office in the enclosed self addressed, stamped envelope.

By copy of this letter, I am also serving a copy of the same upon opposing counsel.

Should you have questions regarding this matter, please feel free to contact me at my Lexington office.

Yours truly,



Frederick I. Hall, III

FIH,III/gmt
Enclosures

cc: S. Andrew Syrett, Esquire
Rolland E. Greenburg, III, Esquire
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