

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Greenville Court of Common Pleas

HONORABLE CHARLES B. SIMMONS, JR.,
MASTER IN EQUITY JUDGE

Appellate Case No. 2018-000759
Trial Court Case No. 2016-CP-23-01849

Christopher Lamar Atchison.....Appellant,

vs.

Veronica Jenkins, in her Individual and Official Capacity as a member or
Officer of Augusta South, LLC, Augusta South, LLC and Collins Properties,
L. P., Defendants, Of which Collins Properties, L. P. is theRespondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

DID THE TRIAL JUDGE ERR BY ALLOWING THE RESPONDENT TO PURSUE A MOTION FOR SUMMARY JUDGMENT AFTER THE TRIAL WAS OVER AND THE CASE WAS RES JUDICATA ?..

II.

DID THE TRIAL JUDGE ERR BY ALLOWING THE RESPONDENT TO PURSUE A MOTION FOR SUMMARY JUDGMENT EVEN AFTER THE RESPONDENT HAD WAIVED ITS RIGHT TO TERMINATE THE APPELLANT'S RIGHT TO CONTINUE PURCHASING THE RESPONDENT'S PROPERTY UNDER A RECORDED BOND FOR TITLE DURING THE TRIAL?

III.

DID THE TRIAL JUDGE ERR BY REFUSING TO DECIDE THE ISSUE BEFORE HIM OF REFORMING THE RECORDED BOND FOR TITLE BY SUBSTITUTING THE APPELLANT ON THE SAID BOND FOR TITLE FOR THE DEFENDANT AUGUSTA, SOUTH, LLC?.

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STATEMENT OF THE CASE

The Appellant filed on March 21, 2016 the within lawsuit against the Respondent and the defendants, Veronica Jenkins and Augusta South, LLC. In his complaint, the Appellant alleged the following Two Causes of actions: 1) Judicial Dissolution of the Defendant Augusta South, LLC, and 2) Reformation of the Deed (Bond for Title). (Appellant's Complaint).

In its Answer, the Respondent submitted a general denial. (Respondent's Answer).

In his complaint, the Appellant sought to dissolve the LLC, Augusta South, LLC that they had incorporated in August, 2014, to operate as a Nightclub and lounge and purchase the building from the Respondent Collins Properties, LLC. (Certificate and Articles of Incorporation).

At the trial of this cause on December 19, 2017, the Appellant testified at trial that he and the defendant Veronica Jenkins were both organizing members of Augusta South, LLC. (Copy of Certificate attached). (Transcript of First Trial, Pgs. 6-8). After the Appellant and the Defendant began operating their nightclub, they were issued a Bond for Title as Augusta South, LLC by the Respondent Collins to purchase the property for \$115,000.00. They were given a credit by the

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Respondent of \$15,000.00 to fix the roof and the Bond for Title was recorded on the Greenville County Office of the Register of Deeds in **Deed Book 2460, at Page 1702** on February 24, 2015. (Bond for Title attached) (Page 8 of first Transcript). The defendant Veronica failed to continue contributing money to the business and the Appellant made all monthly mortgage payments to the Respondent up to and including December 29, 2017 after the first Trial (Pgs. 4 and 5 of Second Transcript).

After the first trial on December 19, 2017, the Court judicially dissolved the Limited Liability Company, Augusta South, LLC, but the court refused to reform the Bond for Title between the Respondent and Augusta South, LLC (Page 16 of First Transcript) but suggested that the parties work out something. (Court Order for Trial of December 19, 2018).

Later, without filing a Motion for Reconsideration or an Appeal, the Respondent filed a Motion for Summary Judgment and after this case had been resolved and over after the first Trial on December 19, 2017, **and after the Respondent had no objections to the Bond for Title**, the Respondent attempted to **relitigate** this case and filed a Motion for Summary Judgment. (Pages 6-8).

Over the Appellant's objection and after the case was **Res Judicata**, **the Respondent was allowed to relitigate the case and the Court granted the**

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Respondent's Motion for Summary Judgment. (Page 11 of Second Transcript).
(Court Order for Hearing or second trial of March 19, 2018).

The Appellant timely served and filed Notice of Appeal and this appeal follows.

For the hereinafter stated reasons, the trial court must be reversed.

ARGUMENT

I.

THE TRIAL JUDGE ERRED BY ALLOWING THE RESPONDENT TO PURSUE A MOTION FOR SUMMARY JUDGMENT AFTER THE FIRST TRIAL WAS OVER ON DECEMBER 19, 2017 AND THE CASE WAS RES JUDICATA.

It is well settled that Rule 56 of the South Carolina Rules of Civil Procedure SCRPC allows a Claimant and/or a Defending party to move for a Summary Judgment in his/her favor upon all or part of the case and, if not fully adjudicated, Rule 56(d) states that **"the Trial shall be conducted accordingly."** (Emphasis added).

Therefore, Rule 56 of the SCRPC requires that the Motion for Summary be pursued and resolved prior to Judgment being rendered and before the case has ended.

Further, the doctrine of Res Judicata bars subsequent actions by the same parties when the claim(s) arose out of the same transaction or occurrence that was the subject

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of a prior action between these same parties. Nelson vs. QHG of South Carolina, Inc., 354 S. C. 290, 580 S. E. 2d 171 (S.C. App. 2003). Res Judicata prevents a litigant “from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit., Nelson, Supra, pg. 6).

Thus, since the Respondent did not pursue or move for a Motion for Summary Judgment before the court in the first Trial on December 19, 2017, the Respondent was barred from pursuing a Motion for Summary Judgment or relitigating any issue in the second trial on March 19, 2018 that could have been raised in the first trial.

In the First trial, the Respondent did not raise or object to the Appellant continuing to make mortgage payments on the aforesaid Bond for Title (Transcript, pgs. 6-8, 10) in the first trial on December 19, 2017, and the Respondent was barred from litigating or raising any objections to the Appellant continuing to make mortgage payments on the aforesaid Bond for Title recorded on **February 24, 2015 in Deed Book 2460, at Page 1702 in the Greenville County Office of the Register of Deeds.**

For the foregoing reasons, the Summary Judgment granted the Respondent in the second Trial on March 19, 2018 and against the Appellant should be vacated and/or set aside.

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II.

THE TRIAL JUDGE ERRED BY ALLOWING THE RESPONDENT TO PURSUE A MOTION FOR SUMMARY JUDGMENT EVEN AFTER THE RESPONDENT HAD WAIVED ITS RIGHT TO TERMINATE THE APPELLANT'S RIGHT TO CONTINUE PURCHASING THE RESPONDENT'S PROPERTY UNDER A RECORDED BOND FOR TITLE DURING THE FIRST TRIAL

Rule 8(a) of the SCRCP requires “a pleading which sets forth a cause of action, whether an original claim, counterclaim, crossclaim or third party claim, to contain “a short and plain statement of the grounds/facts that entitle it to relief,” and, under Rule 8(b), a party shall state in short and plain terms the facts constituting his defenses....

If a party, whether a plaintiff or defendant, does not plead according to Rule 8(a) or Rule 8(b) or Rule 8(c) if it concerns an Affirmative Defense of the SCRCP, said issue is not before the court and the party has essentially “waived” or “relinquished: this said issue or defense.

In reviewing the Respondent's Answer of the Pleadings in the first trial on December 19, 2017, the Respondent did not specifically raised the issue that it did not want to continue accepting the Appellant's monthly mortgage payments under the Recorded Bond for Title and, accordingly, the Respondent waived its legal right

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to raise this matter later. (Respondent's Answer). Further, in the first Trial the Respondent did not object to substituting the Appellant for the Limited Liability Company, Augusta South, LLC, as a party to the aforesaid Recorded Bond for Title. (Transcript of March 19, 2018, pgs. 6-7)

For the foregoing reasons, the Respondent waived their right to object to substitute the Appellant for Augusta South, LLC as a party to the aforesaid recorded Bond for Title and, the Trial Court ruling granting Summary Judgment to the Respondent must be vacated. (Court Orders).

III.

**THE TRIAL JUDGE ERRED BY REFUSING TO REFORM
THE RECORDED BOND FOR TITLE BETWEEN THE PARTIES AND
SUBSTITUTE THE APPELLANT FOR AUGUSTA SOUTH, LLC**

The Appellant, as a member that incorporated Augusta, South, LLC along with Defendant Veronica Jenkins, entered into an Agreement for a Bond for Title with the Respondent to purchase the Respondent's property/building for \$115,000.00 (Bond for Title) (Articles of incorporation).

The Appellant filed this action on two (2) Causes of action, for 1) the Judicial Dissolution of the LLC, Augusta South, LLC; and 2) To Reform the Bond for Title by substituting the Appellant for Augusta South, LLC

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on this said Bond for Title. (Complaint).

The Court issued its Order Judicially dissolving the defendant Augusta South, LLC but it refused to reform the Bond for Title. (the Court Order of the Trial of December 19, 2017) (Bond for Title).

Due to the court's refusal to Reform the Bond for Title, the Respondent filed a Motion for Summary Judgment **after the Trial of December 19, 2017** was over and the case was **Res Judicata** on the grounds that, since the defendant Augusta South, LLC was dissolved by the court, the Bond for Title was no longer in existence or viable and, since the Respondent had only agreed to sell the property to Augusta, South LLC **and not the Appellant**, the Respondent did not feel that it had a contractual obligation with the Appellant and the Respondent told the court that it did not want to sell the property to the Appellant. (Transcript of Trial of March 19, 2018 Pgs. 8-9.

The Court, accepting this argument of the Respondent, improperly accepted the Respondent's Motion for Summary although the case was over and Res Judicata and granted the Respondent Summary Judgment. (Motion for Summary Judgment) (Court Order for second Trial of March 19, 2018).

In the recorded Bond for Title, the Respondent entered into this agreement with the Appellant because he signed the Bond for Title for Augusta South LLC (Bond for Title) and the Respondent was aware that it had entered into the said recorded Bond for Title signed by the Appellant. Further, the Appellant

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testified at trial that he was making all the mortgage payments on the Bond for Title and the Respondent enjoyed accepting the Appellant's money on the Bond for Title which means that the Respondent was aware that it was benefiting from a business arrangement with the Appellant.

Thus, it is a little disingenuous now for the Respondent to argue that it had no business relationship with the Appellant after the Respondent had accepted thousands and thousands of dollars from the Appellant on this Bond for Title.

Since the Circuit Court of South Carolina had the jurisdiction to hear and rule on the Appellant's Case of Action to Reform the said Bond for Title, it was reversible error for the Trial court to refuse to reform this said Bond for Title which was signed by the Appellant along with the Respondent.

Therefore, the Trial Court ruling granting the Respondent's Motion for Summary Judgment must be vacated.

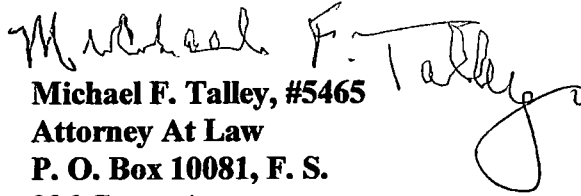
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CONCLUSION

For the foregoing reasons, the judgment issued against the Appellant in the trial court granting the Respondent Summary Judgment and refusing to Reform the Bond for Title must be vacated and reversed.

Respectfully Submitted,



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Dated: July 18, 2018

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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**APPEAL FROM GREENVILLE COUNTY
Greenville County Court of Common Pleas
CHARLES B. SIMMONS, JR., MASTER IN EQUITY COURT JUDGE**

**Appellate Case No 2018-000759
Case No. 2016-CP-23-01849**

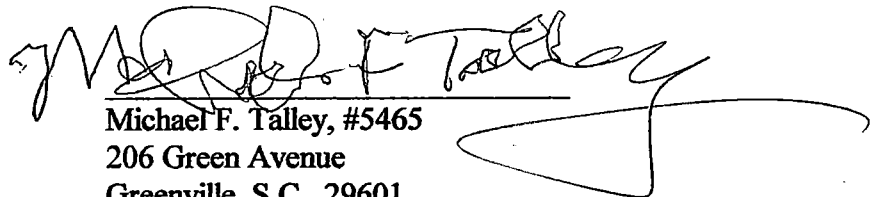
Christopher Lamar Atchison.....Appellant,

v.

Veronica Jenkins, in her individual and Official Capacity as a Member or Officer of Augusta South, LLC, Augusta South, LLC, and Collins Properties, L. P., Of which Collins Properties, L. P., is theRespondents.

PROOF OF SERVICE

I certify that I, as the Appellant’s undersigned attorney, have served a copy of the Appellant’s Initial Brief and Desgain of Matter to be included in Record on Appeal upon the Respondent, Collins Properties, L. P., by delivering a copy of same on July 18, 2018 to the Respondent’s attorney of record, Mr. C. Charles Stewart, 11 Whitsett Street, Greenville, South Carolina, 29601 and by depositing a copy of same in the U. S. Mail and directed to Mr. Mark Meglic, 2435 E. North Street, Ste. 1108-178, Greenville, S. C. 29615.



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Dated: July 18, 2018\

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Ms. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
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Columbia, S. C. 29211

RE: Christopher Lamar Atchison, vs. Veronica Jenkins, in her individual and Official Capacity as a member of Augusta South, LLC, Augusta South, LLC, and Collins Properties, L. P., Of which Collins Properties, L. P., is the Respondent..

Case No. 2016-CP-23-01849

Appellate Case No. 2018-000759

Dear Ms. Kitchings or Deputy Clerk:

Enclosed please find the original and a copy of the Appellant's Initial Brief and Designation of Matters to be included in Record on Appeal for filing on behalf of the Appellant, Christopher Lamar Atchison, and two 2) copies of our Proof of Service upon the Respondent's attorneys, Mr. C. Richard Stewart and Mr. Mark Meglic, on April 18, 2018.

After filing, please forward our office a filed copy of our Proof of Service in the enclosed self-addressed-stamped envelope.

Thank you.

Yours truly


Michael F. Talley, #5465

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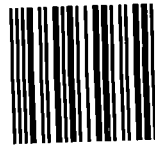
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Enclosures::

cc: Mr. C. Richard Stewart, Esquire
Mr. Mark Meglic, Esquire



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