THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
COURT OF COMMON PLEAS
The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2017-002171

Joey Lemmons, d/b/a Rugs International, ... Appellant,

v.

Macedonia Water Works, Inc., ... Respondent.

BRIEF OF APPELLANT

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

N. Douglas Brannon
Christopher D. Kennedy
KENNEDY & BRANNON, P.A.
229 Magnolia Street
Spartanburg, SC 29306
(864) 707-2020

Attorneys for Appellant

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Attorneys for Appellant

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2. Does the record create a genuine issue of material fact as to whether the water metering and delivery system used for the Appellant's property fall under the scope of S.C. Code Section 58-5-390?

3. Did the trial court properly apply the scintilla of evidence standard in this case?

4. Did the trial court properly view the evidence in the light most favorable to the non-moving party (Appellant) in this case?

STATEMENT OF THE CASE

This case was initiated by the Appellant's filing of a Summons and Complaint on November 24, 2014. The Respondent answered and subsequently filed Motion for Summary Judgment on June 16, 2016. A hearing was held on January 6, 2017, before the Honorable R. Keith Kelly. As a result of the hearing an Order was entered on March 23, 2017 granting summary judgment for the Respondent and dismissing the Appellant's action. Appellant filed a Motion for Reconsideration on April 4, 2017. An Order Denying Motion was entered September 21, 2017. A timely notice of appeal was filed and this brief follows.

Appellant was represented below by Douglas Brannon. J. Falkner Wilkes has joined on appeal. Respondent was represented below and on appeal by Joseph L. Mathis and Lawrence E. Flynn.

ARGUMENT

Standard of Review

Because this case was presented to the circuit court in the posture of a motion for summary judgment, it is governed by Rule 56(c) of the South Carolina Rules of Civil Procedure. This rule provides a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

The Court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. R.J. Hendricks, II v. Clemson Univ., 353 S.C. 449, 455, 578 S.E.2d 711, 714 (2003) (citation omitted). Furthermore, since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

I. THE COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE GENUINE ISSUE AS TO MATERIAL FACT EXISTED.

The Appellant filed suit in this case alleging that the Respondent was charging fees in violation of S.C. Code Section 58-5-390. Section 58-5-390 limits the fee a water service provider may charge for service to a fire sprinkler system. On a motion for summary judgment the circuit court found that Section 58-5-390 was not applicable to the Appellant's case and dismissed the action. (R. 1-7). Rather than applying the plain language of the statute, the circuit court focused instead on the mechanics involved with the meters used in the delivery of water service to the Appellant's property. In its analysis the court further erred by weighing evidence in a motion for summary judgment rather than applying the scintilla of evidence rule.

The rabbit hole: The Appellant has two meters with separate lines that work in conjunction with each other. This configuration is commonly referred to as a "compound" meter. The compound meter has two separate lines and meters. There is a two inch line and an eight inch line. Normal water usage, potable water, is sent through a meter on the two inch line. (R. 184-185) Water for the Appellant's fire sprinkler system goes through a meter on the eight inch line. (R. 184-185). The eight inch line and meter are for the fire sprinkler system and only engage when the fire sprinkler system calls for water and the two inch line capacity is exceeded. (R. 184-185). Since 1999 the Appellant's fire service has never been engaged. Accordingly, the meter for the fire sprinkler service eight inch line shows only one hundred gallons ever having passed through the separate fire service line and meter. (R. 184-185). This is attributable to the initial installation of the fire sprinkler system in 1999. (R. 184-185). All of the water that the Appellant uses on a daily basis therefore passes through the two inch line and potable water meter.

In 1999 when the service was initially installed the Respondent began charging the Appellant $600 per month for water service to the compound meter. (R. 184-185). In 2014, after failing to resolve the billing dispute over the compound meter, the Appellant replaced the compound meter and installed a 1 inch meter and line for potable water. (R. 184-185). Since the change the Appellant is now charged a monthly fee of $20 dollars for the one inch line and $50 for the same 8" line for his fire sprinkler system. (R. 184-185). Clearly, prior to the change, the Appellant was being charged a fee for his fire sprinkler service that was unrelated to any actual costs incurred by the Respondent. This is confirmed by the failure of the record to show any actual installation or maintenance costs allowable under Section 58-5-390 that would justify the earlier $600 a month charges.

"A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system." S.C. Code Ann. § 58-5-390(A).

The court in this case granted summary judgment in favor of the Respondent based on a finding that the Appellant's "compound" meter does not constitute a "separate fire sprinkler line" so as to receive the protection from excessive charges under 58-5-390. The court's decision is clearly flawed. The Appellant's affidavit makes clear that his building is equipped with a fire suppression sprinkler system. The 8" portion of line to the compound meter is there to supply water in case of a fire and for the use of the sprinkler system, and runs through its own distinct meter and line. (R. 184-185; 89; 115). For all other water use, water passes through the 2" portion of the compound meter and passes through its own distinct meter and line. R. 184-185;

89; 115). Contrary to its own decision, the circuit court in its analysis recognizes that the compound meter contains two separate and distinct meters. An examination of the compound meter clearly shows two separate lines and meters. (R. 184-185 89; 115). One line and meter being for the fire sprinkler system and one line and meter being for potable water. Despite recognizing that there are two separate meters within the system the court focused instead on the internal mechanics of how the meters worked. In doing so, the court's analysis under Section 58-5-390 ran completely off the track and down a rabbit hole. The court specifically stated: "The only matter that is left to the consideration of this Court is whether, *due to its configuration*, Plaintiff's compound meter falls within the definition of a 'separate fire sprinkler line' so as to be subject to the limitations on fees and charges of Section 58-5-390." (R. 3 *Emphasis added.*) This misses the mark of the statute entirely.

The Plaintiff has a separate fire sprinkler line and meter. The separate lines and meters can be seen clearly in the photo attached to the Appellant's affidavit. (89; 115). The system is designed in such a way that there is a line to the potable water meter and a separate line to the fire sprinkler system meter. Water runs through one or the other and is measured accordingly each separately from the other. S.C. Code Section 58-5-390 does not limit the manner in which pipes come into or out of the two separate meters, or whether the two separate lines may be joined before or after they run through separate meters. It provides simply that the Respondent may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system. *See* S.C. Code Ann. § 58-5-390. Contrary to the court's analysis, the statute does not place limits on the manner of delivery, the construction

of the meter(s), or any other physical attribute of the system. It requires only that it be a fire sprinkler system. In its ruling, the court overlooks the clear language of the statute, as well as its purpose, which is to promote fire suppression systems by limiting outrageous monthly charges, such as the $600 monthly fees charged in the present case. The court's ruling reaches a result completely contrary to the language, intent, and purpose of the statute.

The cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales. Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Greenville Baseball v. Bearden. 200 S.C. 363, 20 S.E.2d 813, 816 (1942). Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). South Carolina Code § 58-5-390 says:

> (A) A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler System that exceeds the actual costs associated with the water line to the system.

South Carolina Code § 58-5-390.

In analyzing the statute, the plain meaning of the words is clear. There is no ambiguity as to what utilities may charge as to fire sprinkler systems. This applies to all utility companies. There are no exceptions for charging more than the installation and maintenance charges.

The next place to look is at the legislative intent. The legislative intent is unambiguous. It reads "...it is the purpose of this act to create meaningful incentives for the installation of fire sprinkler Systems." 2008 South Carolina Laws Act 357 (H.B. No. 4470). The legislative intent supports a finding that the statute applies to all fire sprinkler Systems without exception, even if the tap supplies other water uses.

South Carolina Code § 58-5-390(A) provides that fees for the installation and maintenance of a fire sprinkler system may not exceed the "actual costs associated with the water line to the System." The "actual costs" include the following:

1) direct labor;
2) direct material;
3) the necessity of increased capacity; and
4) other direct charges associated with the separate fire sprinkler line.

The statute also requires the direct costs to be "documented by either an invoice or work order that specifically assigns the costs to the separate fire sprinkler line." S.C. Code § 58-5-390(B). The language of the statute is clear and implies that the utility company bears the burden of showing the cost of installation and maintenance of the sprinkler line by providing documentation for the charges.

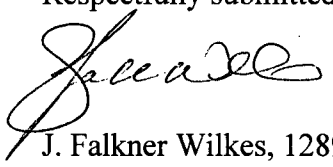
The question of the statute's applicability turns on whether the Applicant has a "fire sprinkler System." Since the issue was raised by motion for summary judgment, the question is

simply whether there is a scintilla of evidence offered that would create a genuine question of material fact under Section 58-5-390. The testimony of the Appellant was clear that his building is equipped with a fire suppression sprinkler system. While there was a lot of testimony as to the mechanics of how his fire sprinkler system worked, the Appellant nonetheless has a fire sprinkler system serviced by a separate line and meter. An examination of the system clearly shows two separate lines running to two separate meters. On a motion for summary judgment the court can not weigh the evidence, which it appears to have done. Instead, the Court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. R.J. Hendricks, II v. Clemson Univ., 353 S.C. 449, 455, 578 S.E.2d 711, 714 (2003). Here, as in all cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). A simple examination of the two meters along with the Appellant's testimony was more than sufficient to require the court to deny summary judgment in this case. Summary judgment in this case improperly deprives the Appellant of a trial on disputed factual issues. *See* Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). The circuit court was therefore in error.

CONCLUSION

Based on the foregoing the decision of the circuit court in granting summary judgment should be reversed.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

N. Douglas Brannon
Christopher D. Kennedy
KENNEDY & BRANNON, P.A.
229 Magnolia Street
Spartanburg, SC 29306

Attorneys for Appellant

August 18, 2018.