

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
SOUTHEAST PAYPHONE GROUP,)
INC., a South Carolina Corporation,)
)
Plaintiff,)
)
)
)
WATER FLOW BUSINESS BROKERS,)
LLC, a South Carolina Limited Liability)
Company, and RYAN CANNON,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CASE NUMBER: 2018-CP-40-01434

ORDER GRANTING THE
DEFENDANT CANNON'S MOTION
TO DISMISS

RECEIVED
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SC Court of Appeals

THIS MATTER came before this court on the 11th day of April, 2018 pursuant to a Notice of Motion and Motion to Dismiss filed by the Defendant Ryan Cannon per Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Present at the hearing were Dennis N. Cannon, Jr., on behalf of Defendant Ryan Cannon, and Jeffrey A. Long, representing the Plaintiff Southeast Payphone Group, Inc. This court has reviewed the court file and considered the arguments of counsel.

It appears that the Plaintiff and the Defendant Water Flow Business Brokers, LLC, a South Carolina Limited Liability Company, entered into an Asset Purchase Agreement on March 17, 2016 wherein the Plaintiff agreed to buy and the Defendant Water Flow Business Brokers, LLC agreed to sell the Plaintiff certain ATM assets. It appears further that the Defendant Ryan Cannon is an agent and officer of the Defendant Water Flow Business Brokers, LLC and acted on behalf of the Defendant Water Flow Business Brokers, LLC insofar as transacting business with the Plaintiff.

At some point in time the relationship between the parties deteriorated and the Plaintiff commenced this lawsuit against the Defendant Water Flow Business Brokers, LLC essentially alleging breach of contract as well as other causes of action. The Defendant Ryan Cannon was also sued in his individual capacity. The Plaintiff, by its counsel, asserts that the Defendant Cannon as a corporate officer and agent of the Defendant Water Flow Business Brokers, LLC is liable for his own tortious acts. Defendant Cannon denies engaging in any tortious acts. The Defendant Cannon, by his counsel maintains that all his dealings with the Plaintiff were done in his capacity as a agent for the Defendant Water Flow Business Brokers, LLC and in furtherance of its interest and that he is therefore, not personally liable for any damages that the Plaintiff alleges resulted from the breach of the contract and other cause of action.

In Paragraph 37 of its complaint the Plaintiff asserts that [t] he actions of Cannon are also imputed to Water Flow under the doctrine of *Respondent Superior*. It is undisputed that and the Plaintiff concedes by its pleadings that the Defendant Ryan Cannon was acting in his representative capacity as an officer and agent for the Defendant Water Flow Business Brokers, LLC.

Where an agent enters into a contract for a known principal, while acting within his authority as agent, he is not personally liable on the result of the contract. The liability, if any, for a breach of contract is that of the principal alone. Green v. Indus. Life & Health Ins. Co., 199 SC 262, 18 S.E.2d 873.

S.C. Code Ann. § 33-44-303 of the Uniform Liability Company Act of 1996 provides as follows:

(a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) a provision to the effect is contained in the articles of organization; and

(2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

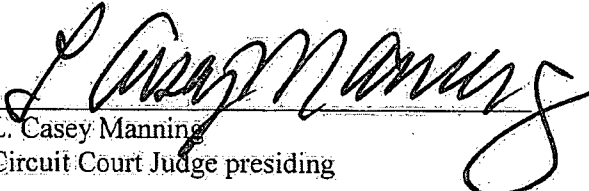
Section 33-44-303 shields the defendant Cannon from personal liability for any acts he took as agent of the Defendant Water Flow Business Brokers, LLC. In such a situation, only the LLC may be found liable. See, Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC, 406 S.C. 596, 753 S.E.2d 840 (2012) (where LLC's manager acted within the scope of his authority in taking actions that interfered with the contract, manager was not subject to personal liability for tortious interference with contract); S.C. Code Ann. § 33-44-302. ("A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act

or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the company or with authority of the company.”)

Based on the foregoing authority, Defendant Cannon, acting as agent for Defendant Water Flow as recognized by Plaintiff is not personally liable for damages as claimed by Plaintiff arising from the alleged breach of the agreement at issue here, and, therefore, should be dismissed as a party Defendant.

THEREFORE, IT IS ORDERED, that Defendant Cannon’s Motion to Dismiss is hereby granted.

This the 20 Sept. day of Sept., 2018.


L. Casey Manning
Circuit Court Judge presiding