

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Drake Malpass,

Case No: 2018-CP-23-03897

Appellant,

v.

Nick Burns,

Respondent.

RECEIVED ORDER
OCT 22 2018
SC Court of Appeals

This matter comes before the Court upon Appeal from Magistrate's Court in which the Magistrate dismissed the case against Appellant Drake Malpass. The Magistrate had found that while a partnership had existed, the partnership had not extended to the employment contract of the Defendant and "Let's Dance" and that the matter had been resolved in a previous action.

In appeals from the magistrate court, the circuit court "may affirm or reverse the judgment of the [magistrate], in whole or in part, as to any or all the parties or for errors in law or fact." S.C. Code Ann. § 18-7-170. The Plaintiff argued that the Uniform Partnership Act (U.P.A.) applied to this matter and thus that the Plaintiff would be entitled to one half of the defendant's earnings while the partnership was in existence. The Court asked if these claims could have been presented in the previous action before the Magistrate to which he replied that he had forgotten about the applicability of the U.P.A. until he was reviewing the final order. The March 2018 hearing was heard by a different Magistrate and found for Appellant and awarded him damages for the recovery of his investment from the Partnership. Since the Plaintiff's failed to assert these additional claims in the previous matter when he acknowledged that he could have, then he is barred from litigating the case in a subsequent matter.

After reviewing the Magistrate's Return and hearing arguments by both parties, the Court finds there is a factual and legal basis for the Magistrate's ruling. Therefore, the Magistrate's findings are affirmed and the Appeal is dismissed.

IT IS SO ORDERED.

September 26, 2018

Judge Gravely's electronic signature to follow.



Greenville Common Pleas

Case Caption: Drake Malpass VS Nick Burns

Case Number: 2018CP2303897

Type: Order/Dismissal

So Ordered

s/ Honorable Perry H. Gravely, #2755