

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Robert E. Hood

Court of Appeals Case 2017-001574
Trial Court Case 2015-CP-40-4319

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DEC 17 2018

SC Court of Appeals

JK Trading, Inc. Appellant

v.

Karl & Sasha, Inc. Respondent

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN RULING IN FAVOR OF RESPONDENT?

STATEMENT OF THE CASE

The parties to this appeal were involved in a non-jury trial before the Honorable Robert Hood on May 11, 2017. A single witness testified and 5 exhibits were entered into the record. After taking the matter under advisement, Judge Hood issued an Order finding in favor of Defendant on June 21, 2017. This appeal followed.

STATEMENT OF THE FACTS

This matter arose from a series of commercial transactions between Plaintiff and Defendant in which Plaintiff claimed to have delivered goods to Defendant for which it was not paid. The majority of the products allegedly delivered were wigs made of human hair. In its Complaint, Plaintiff claimed that the principal balance of the products it delivered, but was not paid for, was \$57,809.01. **R.14.** Plaintiff further sought prejudgment interest at the rate of 8.75% per annum, which Plaintiff claimed was agreed upon by Defendant. **R.13.** Attached to the Complaint were five “Statements” that listed numerous invoice numbers and “CREDMEM” numbers. No actual invoices were attached to the Complaint. Defendant filed a general denial of all the substantive allegations in Plaintiff’s Complaint.

The Trial Exhibits

Plaintiff introduced five exhibits at trial. Plaintiff’s Exhibit 1 was a collection of invoices that were listed on the Statements in attached to Plaintiff’s Complaint. **R.104 - 137.** Plaintiff’s Exhibit 2 was a collection of Credit Memos issued to Defendant for products returned. **R.138-154.** Plaintiff’s Exhibit 3 was a collection of “Statements” similar to the Statements attached to the Complaint, but dated May 11, 2017 and included notations for payments made by Defendants on various dates. **R.155-160.** Plaintiff’s Exhibit 4 was a collection of three letters from Defendant to Plaintiff regarding the alleged debts owed to Plaintiff. **R.161-162.** Plaintiff’s Exhibit 5 was a collection of demand letters sent by Plaintiff to Defendant demanding payment. **R.163-167.**

Defendant presented three exhibits at trial. The first Exhibit was a copy of the discovery responses provided by Plaintiff in July 2016. **R.168-240.** Defendant’s Exhibit 2 was a collection of the Credit Memos produced in discovery by Plaintiff in July 2016. **R.241-250.**

Defendant's Exhibit 3 was a document faxed from Plaintiff to Defendant in March 2014 that provided a list of invoices and credit memos, along with a purported balanced owed by Defendant. **R.251-252.**

Testimony

The only testimony provided at trial was from the Chief Financial Officer of Plaintiff, Ms. Chung. Throughout the testimony of Ms. Chung, she was unable to answer or admitted to speculating her answers. See **R.70, 1.14, R.71, 1.15, R.72, 1.13, R.76, 1.9, R.75, 1.24-25, R.77, 1.3, R.80, 1.24.** Ms. Chung testified that goods were shipped to Defendant, and some of those goods were returned to Plaintiff without objection. Invoices were issued for the products delivered to Defendant, and Credit Memos were issued for the product returned to Plaintiff. **R.55.** Ms. Chung testified on direct that all of the invoices owed by Defendant were provided in Plaintiff's Exhibit 1 (R.32) and that all of the credit memos applied to Defendant's account were provided in Plaintiff's Exhibit 2 (R.34). Ms. Chung further testified that the interest charged on Defendant's account was 3.5% per month, in direct contradiction to the Complaint's allegation that the interest was 8.75% per annum. **R.72** Ms. Chung further testified that Defendant was charged a "restock" fee on all goods returned by Defendant. That restock fee was 30% of the total cost of the goods returned. **R.30.**

On cross-examination, Ms. Chung admitted she had no evidence of any kind that Defendant agreed to any interest rate or "restock fees". **R.73.** There were no documents signed by Defendants agreeing to either an interest rate or restock fees, and Ms. Chung had no personal knowledge of any verbal assent to these alleged terms by any agent of Defendant. She also testified that she had no evidence Defendant had ever paid a restock fee for returns. **R.66-67.**

Ms. Chung admitted that the person with such personal knowledge was no longer employed by

Plaintiff. **R.74**. Ms. Chung further admitted that the two invoices listed on the first page of Exhibit A in the Complaint and Plaintiff's Exhibit 3 at trial were not included in the collection of invoices presented in Plaintiff's Exhibit 1. **R.54-58**. Ms. Chung further testified that the total amount of interest and restock fees being claimed by Plaintiff equaled approximately \$50,000.00 of the alleged \$57,809.01 in principal being sought by Plaintiff. **R.69**.

The testimony reflected that the Credit Memos in Defendant's Exhibit 2 were different from those listed in the Statements in Plaintiff's Exhibits 2 and 3. Ms. Chung attempted to explain part of the difference by claiming that certain credit transfers were requested by Defendant. **R.59-64**. The Credit Memos produced in discovery in July 2016 contained no reference to any transfers or restock fees. **R.64**. Both Ms. Chung and Counsel for Plaintiff admitted that the invoices and credit memos in Plaintiff's Exhibits 1 and 2 were not actually produced in discovery until 3 days before trial. **R.80, l. 3-24, and R.87**.

Ms. Chung was presented with a spreadsheet that matched the invoices presented in Plaintiff's Exhibit 1 with the Credit Memos presented in Defendant's Exhibit 2. The spreadsheet was created by counsel for Defendant, but Ms. Chung was allowed substantial time to review and verify the spreadsheet. **R.88-89**. Upon examination by Counsel for Defendant after her review, Ms. Chung testified that:

1. the spreadsheet contained all of the invoices in Plaintiff's Exhibit 1; **(R.93, l. 6-7)**
2. the spreadsheet contained only the Credit Memos included in Defendant's Exhibit 2; **(R.91, l.1-4)**
3. that the actual types and amount of the products listed in the invoices as delivered were accurately matched to the types and amount of the products listed in the Credit Memos as returned, with a few minor exceptions; **(R.99, l.22-25)** and

4. that once the payments acknowledged by Plaintiff in its own Plaintiff's Exhibit 3 were applied to the balanced owed on the remaining unreturned products according to the spreadsheet, Defendant did not owe Plaintiff any additional funds. (R.93, 1.8-14).

Ms. Chung did qualify her testimony to state that all of the invoices owed by Defendant were not listed in the spreadsheet. But upon further examination she also admitted that these additional invoices were not presented as evidence during the trial. Id.

ARGUMENTS

On appeal of an action at law tried without a jury, the factual findings of the trial court will not be disturbed unless found to be without any evidence which reasonably supports the trial court's findings. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Additionally, the appellate court can correct errors of law. *Okatie River, L.L.C. v. S.E. Site Prep, L.L.C.*, 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct. App. 2003). An action to collect a debt is an action at law. *Mace Industries, Inc. v. Paddock Pool Equipment Co.*, 288 S.C. 65, 339 S.E.2d 527 (Ct. App. 1986).

I. THE TRIAL COURT'S VERDICT IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Appellant's entire argument is based on a premise that there was no evidence to contradict the testimony of Ms. Chung at trial. This premise is simply false. While no witnesses were introduced at trial by Respondent, three exhibits were introduced and the majority of Ms. Chung's testimony was done by way of cross-examination. Quite simply, the best witness for the defense was the only witness of the plaintiff.

As the lower court correctly determined, Ms. Chung was simply not trustworthy. She openly admitted to withholding documents in discovery and failing to bring all of the alleged invoices to trial. She ultimately agreed with counsel for Respondent that, based on the evidence presented at trial, Respondent did not owe anything if the phantom "interest and restock fees" were eliminated from the invoices. Numerous times during her testimony, Ms. Chung responded that she did not know the answer to counsel's questions on cross-examination or her own re-direct. Her unfamiliarity with the documents and evidence filed with the Court, presented by her on direct examination, and produced by Appellant in discovery, led to

substantial delay for her to review the essential facts of her own claim. The lower court was troubled, and rightly so, that the invoices upon which Appellant's entire case was based were not produced until three days before trial and the fact that the Credit Memos originally produced in discovery were modified to add more than \$27,000.00 to Appellant's claim prior to trial. "In a law case, the credibility and weight to be accorded evidence is solely for the fact finder to determine." *Hanna v. Palmetto Homes, Inc.*, 300 S.C. 535, 537, 389 S.E.2d 164, 165 (Ct. App. 1990); *see Parsons v. Georgetown Steel*, 318 S.C. 63, 67, 456 S.E.2d 366, 368 (1995) (stating the credibility and weight of testimony is for the trier of fact). Therefore, the lower court was justified in finding the only witness of Appellant unreliable.

Regardless of Ms. Chung's credibility, the evidence presented below was sufficient to justify the lower court's verdict. This is not a case of one party's testimony and evidence conflicting with that of an opposing party. The only evidence presented in this case originated from Appellant. All of the exhibits in the case, with the exception of *Plaintiff's Exhibit 4* were created by Appellant. This case is one of a single party's testimony and evidence conflicting with that of itself. Furthermore, none of it makes sense and none of it adds up. Appellant admitted that \$50,000.00 of its \$57,809.01 claim consisted of interest and restock fees. No credible evidence was presented to support the claim that either interest or restock fees were part of the agreement between the parties. Appellant further admitted that invoices equaling \$29,830.00 that were listed in the Statements in *Plaintiff's Exhibit 3*, and comprising a substantial portion of the alleged debt owed by Respondent, were not introduced into evidence at trial.

Any analysis of the actual exhibits introduced at trial demonstrates a reasonable basis for the lower court's verdict. The total amount of principal charges on the invoices claimed by

Appellant equals \$132,986.00 before the improper interest and restock fees are added, but before any payments or Credit Memos are applied. The total amount of the Credit Memos in the record equals \$150,936.80. Under either analysis, it is clear that Respondent owes nothing to Appellant under any scenario. Finally, the analysis of the spreadsheet (containing the actual transactions at issue in the trial) conducted by the CFO of Appellant, which took longer than an hour, resulted in the primary assertion of respondent being affirmed. According to the documents submitted to the lower court as evidence, it is clear that Respondent does not owe any money to Appellant.

CONCLUSION

Appellant presented a single witness at trial, along with 5 Exhibits. The lower court found the witness to be untrustworthy, and there is ample evidence to support such a finding. With regard to the documents introduced, Respondent introduced its own by way of three Exhibits. These exhibits more than disputed the claims of Appellant, they proved that no debt was owed. The lower court's verdict is supported by substantial evidence and this court must affirm under the appropriate standard of review.

Date: December 12, 2018.

Respectfully submitted,



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