

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
J. Cordell Maddox, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2018-001603

Shadia Hewitt,.....Respondent,

v.

The Shaw Corporation d/b/a Shaw's Pharmacy and Charles
Cleburn Turner,.....Defendants,

Of whom The Shaw Corporation d/b/a Shaw's Pharmacy
is the Appellant.

INITIAL BRIEF OF RESPONDENT

January 17, 2019

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STATEMENT OF ISSUE ON APPEAL:

Did the Circuit Court err in awarding treble damages to Hewitt under the South Carolina Payment of Wages Act?

STATEMENT OF THE CASE:

The Respondent agrees with the Appellant on the issues of appeal. The Respondent also incorporates herein the Procedural Background of the Order Granting Plaintiff's Motion For Partial Summary Judgment.

This lawsuit arises from the employee-employer relationship between the Respondent, Ms. Hewitt, and her former employer, Charles Cleburn Turner, a pharmacist and the owner of Apellant, The Shaw Corporation. Ms. Hewitt worked as a licensed pharmacist at Shaw's Pharmacy for approximately fifteen years. She alleges in her Complaint that from 2011 through 2013, wages were withheld from her as well as other expenses for which she was due reimbursement from her employer were never paid. The Respondent pled three causes of action: (1) a violation of the S.C. Wages Payment Act, (2) breach of contract, and (3) unjust enrichment. The Appellant answered these allegations, and they allege that all payments due to the Respondent have been made in accordance with the S.C. Wage Payment Act. Appellant further denies that any contract for employment or reimbursement existed.

This matter was before the Court, pursuant to the Respondent's Motion For Partial Summary Judgment. Respondent argues that she is entitled to partial summary judgment, as to unpaid wages, in the amount of \$10,400.00, between the time period of May 3, 2013, and July 26, 2013. The Respondent contends that an Order from The Office of Wages and Child Labor, (a division of the Department of Labor, Licensing, and Regulation, "LLR"), awarding her these unpaid wages by is binding on the Appellant under the S.C. Wage Payment Act. As a result, the Appellant is collaterally estopped by this decision, and these unpaid wages are now due in this case.

LLR's investigation found that the Appellant had violated Section § 41-10-40(D) of the South Carolina Payment of Wages Law, and in so doing, "failed to pay wages due to Shadia Hewitt in the approximate amount of \$10,400.00 by regular pay day(s) of 5/3/2013 through 7/26/2013." (Exhibit A). In the LLR matter, Mr. Turner also admitted that he was "aware of the \$10,400 wage payment he owes to claimant, which he attends to pay the claimant", during the LLR investigation. Despite this Order, the wages of \$10,400.00 have not been paid. Neither have any attorney's fees been paid by the Appellant to the Respondent.

STANDARD OF REVIEW:

Standard of Summary Judgment: Summary judgment should be granted, when there is no “genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 757 S.E.2d 399 (2014)(citing *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002)). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976), as amended.

ARGUMENT:

ISSUE:

Did the Honorable Circuit Court err in awarding treble damages to the Respondent?

The Honorable Circuit Court Judge did not err in any way in awarding treble damages to the Respondent.

S.C. Code Section 41-10-50 (1976), as amended specifically states,“

When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday, which may not exceed thirty, (30), days. (Emphasis added.)

S.C. Code Section 41-10-80 (1976), as amended specifically states,“

In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney’s fees as the Court may allow. (Emphasis added.)

Of particular interest is the case of Shelton vs. Oscar Mayer Foods Corp., 325 S.C. 248, 554, 481 S.E.2d 706, 709 (1997)

In Shelton, the Court set forth the starting point for analyzing, whether a particular agency’s findings are preclusive:

In the abstract, there is no legitimate reason to permit a defendant who has already thoroughly and vigorously litigated an issue and lost the opportunity to relitigate the identical question . . . The public interest demands an end to the litigation of the same

issue. Principles of finality, certainly, and the proper administration of justice suggest that a decision once rendered should stand unless some compelling countervailing consideration necessitates relitigation. *Id.* At page 252

Collateral estoppel principles preclude a party from relitigating an issue, which was decided in a previous action. *S. Carolina Property & Casualty Ins. Guarantee Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). South Carolina Courts have applied the doctrine of “issue preclusion” to the factual determinations of administrative tribunals. See *Bennett v. S.C. Dep't of Corrections*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) (citing *Earle v. Aycock*, 276 S.C. 471, 475, 279 S.E.2d 614, 616 (1981)) (“This Court has repeatedly held that, under the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action.”); See also *Crosby v. Prysmian Communications Cables & Sys. USA, LLC*, 397 S.C. 101, 109, 723 S.E.2d 813, 817 (Ct. App. 2012) (holding that the Worker’s Compensation commission’s findings collaterally estopped further litigation). However, not every factual determination by an administrative agency is entitled to preclusive effect. *Shelton v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 254, 481 S.E.2d 706, 709 (1997). *S. Carolina Property & Casualty Ins. Guarantee Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991) | *Bennett v. S.C. Dep't of Corrections*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) | *Earle v. Aycock*, 276 S.C. 471, 475, 279 S.E.2d 614, 616 (1981) | *Crosby v. Prysmian Communications Cables & Sys. USA, LLC*, 397 S.C. 101, 109, 723 S.E.2d 813, 817 (Ct. App. 2012)

Section A of the Analysis in the Order Granting Respondent's Motion For Partial Summary

Judgment states:

The Appellant had a full and fair opportunity to litigate the wage payment claim in the LLR proceeding.

The Circuit Court finds that the potential penalties and civil action were sufficient incentive for Appellant to litigate the LLR claim fully. LLR's correspondence to the Appellant stated the Respondent was "alleging non-payment of wages of [the Appellant]," and that the investigation was being carried out "[u]nder the South Carolina Payment of Wages Law 41-10-40." (Exhibit B). Under S.C. Code Ann. § 41-10-40, an employer must be assessed a civil penalty and can be further held responsible in a civil action, pursuant to the S.C. Payment of Wages Act. S.C. Code Ann. § 41-10-80. (Emphasis added.)

S.C. Code Ann. § 41-10-80(D) states that if an employer violates S.C. Code Ann. § 41-10-40, "the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the Court may allow." In addition to the Statutory consequences, LLR's correspondence to the Appellant stated that a "[f]ailure to respond to these allegations will result in [LLR] accepting the charges made by the [Respondent] as factual and appropriate Warnings/Citations being issued." (Exhibit B). Therefore, from the onset of the administrative proceeding, the Appellant had sufficient indication of the serious consequences that could result from the investigation to instill the motivation to litigate the claim vigorously.

The Appellant argues in its memorandum that the LLR process was not 'formal' enough for Mr. Turner to take the Respondent's wage payment claim seriously. This argument is unpersuasive. The LLR is the same agency, which has the power to revoke Mr. Turner's license

to practice as a pharmacist. Additionally, Mr. Turner was well aware that he was being investigated for a violation of State law, and that if the investigation showed he violated that law, he would be fined and potentially be liable for treble damages. Significantly, the Appellant hired an attorney for the LLR proceeding. That fact indicates that he believed the LLR investigation was serious enough to warrant a legal defense. It appeared to the Circuit Court that Mr. Turner, (and the Appellant), had and still has no defense, as Mr. Turner ultimately admitted the charges against him, and further admitted that he continued to owe the Respondent money. Therefore, the Appellant also admitted the same.

In addition, the Circuit Court found that the Appellant had a full and fair opportunity to contest the LLR claims against both Defendants because they were able to present evidence, witnesses, and factual or legal arguments in their defense at the LLR hearing.

The Supreme Court of South Carolina has held that “[w]here [a] plaintiff has had a full and fair opportunity to litigate . . . he should be collaterally estopped [from] adjudicat[ing] the same issue.” *Irby v. Richardson*, 278 S.C. 484, 487, 298 S.E.2d 452, 454 (1982). The Court of Appeals of South Carolina has found that an employer had a full and fair opportunity to present evidence and witnesses, factual or legal arguments, and had the ability to appeal. See *Crosby*, 723 S.E.2d at 817. This is the case in this proceeding.

Like the employer in *Crosby*, the Appellant had the opportunity to present evidence, witnesses, and factual or legal arguments in his defense. LLR noted that the basis for the Respondent’s Complaint was, “that the employer has been taking her paychecks and not only forging her signature, but endorsing the checks and then cashing them at the bank and keeping the cash.” (Exhibit A). The Appellant attempted to defend by claiming that, “the business was going

through a financial strain”, and that he would “take her payroll checks for her to the bank after signing her name”, and, ultimately, give her the cash. (Exhibit A).

Clearly, the Appellant had the opportunity to submit evidence to LLR and provide all facts and evidence to refute the Plaintiffs’ claims of forgery and conversion of funds. However, during the LLR proceeding, the Appellant ultimately admitted that he had not paid the Respondent because the wage payment checks to her were converted and used for his purposes, rather than wage payments.

The Appellant also argues in the Appellant’s Memorandum In Opposition Of Summary Judgment that the Appellant did not have a full and fair opportunity to litigate the issue because the Appellant was not able to cross-examine the Respondent or review the documents she submitted to LLR before LLR made its ruling. This argument is not persuasive. The Appellant never mentions requesting these and was well aware of the opportunity, prior to the LLR hearing.

The purpose of the Respondent’s LLR investigation determined the exact same claims asserted here under Chapter 10, Title 41 of the S.C. Code. Chapter 10 of Title 41 of the South Carolina Code was enacted in 1986. Chapter 10 is made up of 11 sections, all of which deal with “the payment of wages.” Act 380 of the 106th Sessions of the South Carolina General Assembly was enacted in 1986 “to provide for the method and manner of the payment of wages” 1986 S.C. Acts, Act 380. This Act set forth the obligations that employers have to pay their employees, and what can occur if employers fail to meet these obligations. Section 41-10-70 clearly gives LLR the ability to conduct an investigation and in the very next Code Section, (§41-10-80), provides that the right of civil action is given to an employee, who is not paid due to an employer’s violation of the very same chapter. “In case of any failure to pay wages due to an employee, as required by Section 41-10-40 or 41-10-50, the employee may recover in a civil action an amount

equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the Court may allow." S.C. Code Ann. § 41-10-80 (1993). The legislation gives the Respondent the right to bring this action in this proceeding and refers back to the same authority cited by the LLR investigator, when the Respondent first put the Appellant on notice of the investigation,. S.C. Code Anno. § 41-10-40 (1993). Based on a reading of these documents, the General Assembly intended the regulatory powers of LLR to go hand in hand with the right of a wronged employee to bring a civil action against that same Appellant. Therefore, the Honorable Trial Court did not err in any way in this matter.

Pursuant to Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984), the LLR findings from the above-referenced investigation are binding on the Appellant in this action, and they are collaterally estopped from arguing the "Respondent was paid all salary and expenses due to [the Respondent]" for the period of May 3, 2013 through July 26, 2013, (Answer and Counterclaim of Defendants, p. 3). As the Appellant has presented no other valid argument in opposition to the Respondent's Motion For Partial Summary Judgment, the Circuit Court found that there are no material issues of fact, and that the Respondent is entitled to judgment as a matter of law, pursuant to Rule 56, SCRPC. The unpaid wages for the period of May 3, 2013 through July 26, 2013 are \$10,400.00.

The Appellant never advocated that the wages were not due to the Respondent until his Affidavit appeared. Long before, its representative and owner, Mr. Turner, admitted that these wages were due to the Respondent, and that the Appellant still intended to pay the Respondent. Therefore, the Appellant has acted in bad faith by changing its "story". One cannot have

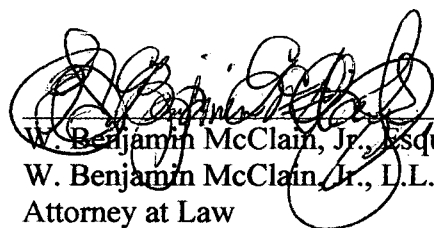
his/her/its cake and eat it, too. There is and was never a genuine dispute that the Appellant owed this amount to the Respondent. Therefore, the Appellant is collaterally estopped from attempting to relitigate this issue. Accordingly, the Appellant has, indeed, acted, (intentionally), unreasonably and in bad faith merely by continuing to litigate an issue that has already been determined.

The purpose of Hewitt's LLR investigation determined the exact same claims asserted here under Chapter 10, Title 41 of the S.C. Code. Chapter 10 of Title 41 of the South Carolina Code was enacted in 1986. Chapter 10 is made up of 11 sections, all of which deal with "the payment of wages." Act 380 of the 106th Session of the South Carolina General Assembly was enacted in 1986 "to provide for the method and manner of the payment of wages" 1986 S.C. Acts, Act 380. This Act sets forth the obligations that employers have to pay their employees, and what can occur if employers fail to meet these obligations. Section 41-10-70 clearly gives LLR the ability to conduct an investigation and in the very next Code Section, (§41-10-80), provides that the right of civil action is given to an employee, who is not paid, due to an employer's violation of the very same chapter. "In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the Court may allow." S.C. Code Ann. § 41-10-80 (1993). The legislation gives the Respondent the right to bring this action in this proceeding and refers back to the same authority cited by the LLR investigator, when the Respondent first put Mr. Turner on notice of the investigation, § 41-10-40. Based on a reading of these documents, the General Assembly intended the regulatory powers of LLR to go hand in hand with the right of a wronged employee to bring a civil action against that same Defendant.

CONCLUSION:

The Circuit Court did not err in any way, and it is respectfully submitted that the Orders should be affirmed.

Respectfully submitted,



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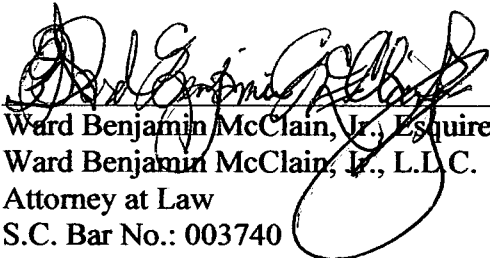
of whom The Shaw Corporation d/b/a Shaw's Pharmacy is the Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent by sending to Appellant's attorney of record a copy of the same via first class mail, properly addressed, postage pre-paid to the following address:

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