

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS

LETITIA H. VERDIN, CIRCUIT COURT JUDGE

CASE NO. 2011-CP-39-1198

SABERTOOTH MOTORCYCLES, LLC

RESPONDENT


-V-

STANLEY SCRUGGS,

APPELLANT

FINAL BRIEF OF APPELLANT

July 23, 2012


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JUL 31 2012

SC Court of Appeals

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4. Lowndes Hill Realty Co. v. Greenville Concrete Co. 229 S. C. 619, 93 S. E. 2d 855
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STATUTES

1. South Carolina Code of Law Section 15-69-50; pages 1,8,9,10 and 11
2. South Carolina Code of Law Section 56-5-2525(B) pages 2,4,6,7,9,10 and 11
3. South Carolina Code of Law Section 56-5-2525(c) pages 2,4,6,7,9,and 11
4. South Carolina Code of Law Section 29-5-10 pages 4,6 and 7
5. South Carolina Code of Laws Section 16-11-769 page 6

STATEMENT OF ISSUES ON APPEAL

I. THE CONFLICT BETWEEN THE SOUTH CAROLINA CODE OF LAWS SECTION 15-69-50 AND SECTION 56-5-2525(B) 56-5-2525(C) AND SECTION 29-5-10.

II. RESPONDENT ONLY ARGUED THOSE CODE SECTIONS 56-5-2525 (B) 56-5-2525(C) AT THE PRE-SEIZURE HEARING. NO PLEADING OF THE REQUEST FOR THOSE SECTIONS WAS MADE BY RESPONDENT. APPELLANT ANTICIPATED THE ARGUMENT AND BRIEFED THE ISSUE.

III. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN THE TRIAL COURT FOUND THAT AT A MOTION OR PRE-SEIZURE HEARING THAT RESPONDENT WAS NOT NOTIFIED BY APPELLANT AS TO TOWING THE VEHICLE, SUPERCEDED THE CODE SECTION THAT REQUIRED AN UNDERTAKING BEING SERVED WITH THE COMPLAINT FOR PRE-SEIZURE TO OBTAIN JURISDICTION.

IV. RESPONDENT ADVISED THE COURT THERE WAS NO WORD, STATEMENT AND OR PHRASE, AS TO "AUTHORIZED" AS TO TOWING THE VEHICLE?

STATEMENT OR FACTS OF THE CASE

As is reported before, except that, NO MOTION for immediate possession was filed as stated by the Respondent's Statement of the Case.

Further, the highlighting of the word "after" appears to suggest that there was no contact prior, but see the letters from owner of real property to Respondent.

STANDARD OF REVIEW

In cases involving the application of the different code of law sections, the appellate court can reverse the decision of the Circuit Court Judge when there are different code sections from which a different ruling would have changed the outcome of the Judge's decision.

Statutory interpretation is a question of law. SC Uninsured Employer's Fund v. House 360 S.C. 468, 602 S. E. 2d 81 (Ct. App. 2004).

A. The finding at the Motion hearing made part of the Order of the Court which order indicates that the Order is a final Order.

1. In this case and by this ruling, the Order of the Court is a final Order. The property is to be returned to the Plaintiff Respondent.

Sauner v. Pub. Serv. Auth. of South Carolina 354 S. C. 397, 581 S. E. 2d 161 (2003).

2. As the Order issued, Appellant would have no further recourse as to the Plaintiff, who would have the tractor and trailer, out of state and Appellant would have no real way to enforce any Order in favor of the Appellant.

ARGUMENTS

I. THE CONFLICT BETWEEN THE SOUTH CAROLINA CODE OF LAWS SECTION 15-69-50 AND SECTION 56-5-2525(B) 56-5-2525(C) AND SECTION 29-5-10.

A. CODE SECTIONS 56-5-2525 (B) 56-5-2525(C) as stated by the Appellants Brief to the Pre-Seizure hearing apply to and are for abandoned vehicles which are towed at the landowner or person in charge of the real estate. SECTION 29-5-10 applies to Claim and Delivery suits. A review of South Carolina Code of Laws Section 16-11-760 applies to an unauthorized or unlawfully parked vehicle as defined by Sec. 56-5-5630 on private property without the property owners consent:

1. The Complaint indicates that the trailer was parked with the owners consent and the trailer owners consent. See Paragraph 5 and 6 of the Complaint. Also, paragraphs 3, 4, and 5 indicate the same, that Code Section is not applicable.

a. Respondent states then on February 4, 2011 knowledge was gained as to location from Appellant. page 2 line 1 to line 24 transcript.

b. The vehicle was not an abandoned vehicle as per the Sections stated by Respondent.

b. Respondent's own statements indicate there was an authorization. transcript page 2 line 13 to 14.

2. South Carolina Code of Laws Section 29-15-10:

a. Trailer left with towing company the Defendant.

b. Trailer has been continuously left in possession of towing company as the contact with Respondent was late January 2011 and the suit was not filed until August 2011.

c. Section C. does not need to be complied with as the party's all have information and knowledge of the ownership and towing and storage.

- d. The trailer has been stored at the storage facility of the towing company the Defendant.
- e. there is no harm to the trailer, and,
- f. if the trailer is released and taken out of state,
- h. Appellant would have no “real” recourse.
- i. when Appellant wins Appellant’s judgment,
- j. which would be a perfected “lien”; and,
- k. Respondent always may inspect the vehicle tractor and trailer.

II. RESPONDENT ONLY ARGUED THOSE CODE SECTIONS 56-5-2525 (B) 56-5-2525(C) AT THE PRE-SEIZURE HEARING. NO PLEADING OF THE REQUEST FOR THOSE SECTIONS WAS MADE BY RESPONDENT. APPELLANT ANTICIPATED THE ARGUMENT AND BRIEFED THE ISSUE.

A. Appellant did not receive any Motion and or Brief prior to the Pre-Seizure hearing that the Respondent would be arguing the Code Sections as to towing until the argument at the Motion hearing, but was anticipated by Appellant. transcript page 2 line 2 to 6.

1. Secondly at the Motion hearing the Respondent argued that no lien was filed by Appellant. This issue also was not raised by the Complaint and no notice given until arguments at the Motion hearing. transcript page 3 line 3 to 9.

2. At the Motion hearing Appellant had anticipated the Respondent’s argument as to towing, but did not know of the “lien argument”. Respondent’s arguments as to the towing statutes that has been stated above.

B. As to the Respondent’s “lien” argument, again the argument was not plead, and only argued at the Motion hearing. The argument was and is not a requirement and none

has been plead that a "lien" has to be in place to file and or claim a right or interest as to any property.

1. Appellant argued there was no requirement as to a "lien" as to a claim and delivery, reference is made to the Claim and Deliver statute.

2. Appellant did argue that a filing of a Complaint and or a Counterclaim constituted a "lien" as that was a notice that a judgment would issue for either Appellant and or Respondent, which would constitute a lien.

C. There is no mention of any lien as to Section 15-69-50 and then the second full paragraph of SECTION 15-69-50 does not indicate any lien.

III. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN THE TRIAL COURT FOUND THAT AT A MOTION OR PRE-SEIZURE HEARING THAT RESPONDENT WAS NOT NOTIFIED BY APPELLANT AS TO TOWING THE VEHICLE, SUPERCEDED THE CODE SECTION THAT REQUIRED AN UNDERTAKING BEING SERVED WITH THE COMPLAINT FOR PRE-SEIZURE TO OBTAIN JURISDICTION.

A. The finding at the Pre-Seizure or Motion hearing made part of the Order of the Court which order indicates that the Order is a final Order.

B. The Trial Court analyzed the code sections, 56-5-2525 (B) 56-5-2525(C), as prevailing as and because Appellant did not give the notice as required.

C. The Trial Court also indicated that as no "lien" was filed by Appellant the Appellant could not prevail as to the Claim and Delivery.

1. Appellant states that the Claim and Delivery statute does not indicate nor state any lien has to be filed.

2. Appellant states the South Carolina Code of Laws Section 15-69-50, does not indicate any "lien" provision.

3. Respondent filed the Claim and Delivery without an undertaking as the Code Section indicates.

4. Respondent's Complaint was promptly Answered and demand was made for a Pre-Seizure hearing.

5. Respondent then argued different Code of Laws Section at the Pre-Seizure hearing.

6. The only issue that should have been heard at the Pre-Seizure hearing was that the Respondent has filed properly.

7. Respondent did not file any undertaking.

8. Paragraph 2 of the Code Section 15-69-50 indicates if there is no filing of the undertaking then Appellant shall have the property or retain the property until the determination of the suit.

IV. RESPONDENT ADVISED THE COURT THERE WAS NO WORD,
STATEMENT AND OR PHRASE, AS TO "AUTHORIZED" AS TO TOWING THE
VEHICLE?

A. Appellant argued to the Court that the towing was authorized. transcript page 5
line 5 to 6; then line 10.

1. Respondent's own statements indicate there was an authorization. transcript
page 2 line 13 to 14.

2. Respondent does not see any distinction made between authorized and non-
authorized. transaction page 8 line 16 to 19.

3. Code Section 56-5-2525 uses the phrase "tows and stores without the person's
knowledge" and as reported Respondent indicates authorizations.

V. Contrary to the representations of the Respondent, Respondent did not file
Respondent's suit on the basis of the South Carolina Code Sections stated.

CONCLUSION

The record is clear that:

A. Respondent did not plead the South Carolina Code of Laws used at the Pre-Seizure hearing.

1. Code Section 56-5-2525 applies to towing and storing without a persons knowledge.

a. the issue of knowledge is a jury question. Respondent knew or should have known the vehicles would be towed.

2. Code Section 56-5-5630 may not apply as the vehicles towed may not be abandoned.

B. Respondent did not plead the issue of no lien filed by the Appellant.

C. Appellant argued that as no Undertaking or bond was filed with the Complaint and Notice of Pre-Seizure hearing, therefore no jurisdiction.

1. Respondent filed a Claim and Delivery.

2. Code Section 15-69-50 states Respondent with a written undertaking sheriff shall forthwith serve, which was not done.

3. Paragraph Two, Respondent did not file the undertaking, Appellant shall retain. paragraph 2, Code Section 15-69-50, UNTIL a hearing.

July 23, 2012

Respectfully submitted,

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STANLEY SCRUGGS,

Appellant.

IN THE MATTER OF NOTICE OF RIGHT TO PRE-SEIZURE HEARING AND MOTION OPPOSING

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) SCACR.

July 23, 2012

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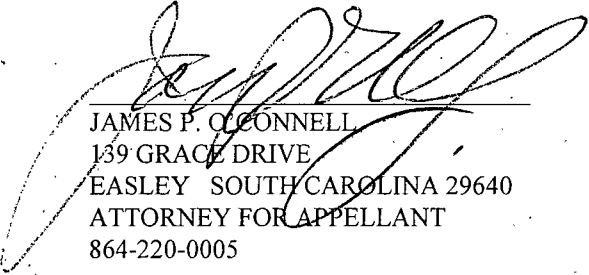
Appellant.

IN THE MATTER OF NOTICE OF RIGHT TO PRE-SEIZURE HEARING AND MOTION OPPOSING

CERTIFICATE OF SERVICE

APPELLANT ADVISES the Court, that on July 30th 2012, the Appellant did cause to be served upon the attorney for the Respondent, Brian James, by hand delivery to the address noted below; the Final Brief of the Appellant and the Record of Appeal, so stated by attorney for Appellant.

July 30, 2012


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