

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Hon. S. Jackson Kimball, III
Special Circuit Court Judge
York County Master in Equity

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SC Court of Appeals

Appellant Case No. 2018-000411

Suzette LeFebvre.....Appellant

vs.

Blanco GmbH+CO.KG.....Respondent

FINAL BRIEF OF APPELLANT

February 19, 2019

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STATEMENT OF ISSUES ON APPEAL

- I. **DID THE TRIAL COURT ERR IN FAILING TO RECUSE ITSELF?**
- II. **DID THE TRIAL COURT ERR BY GRANTING RELIEF TO RESPONDENT'S MOTION TO DISMISS ON THE BASIS OF RES JUDICATA?**

STATEMENT OF THE CASE

Plaintiff Appellant Suzette LeFebvre commenced this Appeal on March 5, 2018 and served the Notice of Appeal on Defendant Respondent Blanco GmbH+CO.KG on March 5, 2018 by service upon the Defendant Respondent's counsel. Plaintiff Appellant seeks a reversal of the February 6, 2018 Order rendered by the Honorable S. Jackson Kimball, Master in Equity wherein Judge Kimball denied LeFebvre's Motion to Recuse himself from this case, either on a temporary or permanent basis, and a reversal of the Master in Equity's Order granting the Defendant Respondent's motion for Summary Judgment. LeFebvre's appeal is based upon two arguments: 1) As to the failure to recuse himself, the Master In Equity improperly ruled that his ruling in another case involving the LeFebvre did not evidence prejudice on his part; 2) As to the Summary Judgment, the Master in Equity abused his discretion in finding that no general issues of fact or law existed in the Plaintiff Appellant's case.

STATEMENT OF FACTS

On May 19, 2001, Plaintiff Appellant Suzette LeFebvre (hereinafter "LeFebvre") and her former spouse, Vito Antonio Laera (hereinafter "Laera") were married in Colorado in the Foothills Chapel. At the time of the ceremony, the couple had one young son and were residing together in Miami, Florida. While the couple did not apply for or receive a marriage license prior to the ceremony, Colorado Revised Statute 14-2-109.5, recognized "common law marriage." *C.R.S. 14-2-109.5*. Following the marriage, the couple returned to Florida. They moved to

Matthews, North Carolina on or about 2006, where they resided as husband and wife until they separated on December 7, 2012 due to Laera's adultery. See Complaint filed in *LeFebvre v. Laera*, No. 2014-DR-46-623, 2014 Fam. Ct. (See Record on Appeal, p. 255-262; further references shall be designated "R"). Laera moved out of the marital home located in North Carolina into a warehouse apartment the couple owned located at 419 Yorkmont Road Fort Mill, York County, South Carolina (hereinafter "Property"). The Property is a commercially zoned warehouse wherein Laera operated his business and included a 6.5 acre tract of real property which can also be identified as York County Tax Map No. 7280000030. On March 25, 2014, LeFebvre filed a Complaint against Laera in the York County Family Court alleging adultery as the grounds for the separation and made claims for child custody, child support, alimony, equitable distribution, and attorney fees ("Divorce Action"). LeFebvre was represented in the domestic proceedings by attorneys Halford, Niemiec & Freeman, of the York County Bar; Laera appeared pro se in the domestic proceedings.

As part of domestic proceedings, the parties negotiated the terms of child custody and visitation and child support for two minor children, alimony for LeFebvre, the dependent spouse, equitable distribution, and attorney fees to be paid for by Laera. The negotiations were conducted between LeFebvre's attorney and Laera, who was pro se. In addition to the above claims, negotiations included, but were not limited to; filing for temporary relief on issues of child custody, child support, alimony, attorney fees and to appoint a *guardian ad litem* for the minor children as well as preparation of a financial affidavit and the exchange of financial documents.

On or about mid-October 2014, a final settlement was reached on the terms and conditions of child custody, child support, alimony, equitable distribution, and attorney fees.

The parties memorialized the agreement in a Consent Order accepted by and entered by the Honorable Henry T. Woods of the Family Court in and for York County, South Carolina in Case # 2014-DR-46-623. (See R., p. 3-7). As part of the equitable distribution of the assets and liabilities of the marriage, the Consent Judgment awarded the Property to LeFebvre along with the mortgage obligation encumbering it. LeFebvre was also awarded sole custody of the minor children, child support, alimony, and additional assets and liabilities of the marriage.

Unbeknownst to LeFebvre during the marriage, Laera had been named as a defendant in a lawsuit in the Southern District of Florida Court for misappropriating intellectual property from Defendant Respondent Blanco + GmbH+CO.KG (hereinafter "Blanco"). In early 2014, a Judgment was entered against Laera and in October of that year, Blanco registered its Judgment for enforcement in York County, South Carolina ("Foreign Judgment"). (See R. 270-274). At no time prior to the separation, during the domestic proceedings, or following their conclusion did LeFebvre have knowledge of Blanco's Judgment against Laera.

Several months after the divorce proceedings were finalized, LeFebvre was named as Defendant with Laera in *Blanco GmbH + CO.KG v. Laera*, No. 0:15-CV-02199 (TLW), 2017 U.S. Dist. PACER Docket, (S.C. Dist. May 26, 2017); (hereinafter "South Carolina Federal Case"), Blanco alleged she had worked in concert with Laera to defraud Blanco from collecting on its Judgment by allowing the Property, inclusive of the warehouse awarded to her in the divorce proceedings to be conveyed to her. Based upon the Blanco's Complaint in the South Carolina Federal Case, Blanco not only appeared to be unaware of the couple's marital status until the disclosure by LeFebvre's counsel, but that the Property had been conveyed pursuant to a domestic court order. Following notification of the couple's marital status by LeFebvre's attorneys, Blanco argued in response to LeFebvre's Motions to Dismiss and Summary

Judgment, that the couple was not married and therefore, Judge Wood had no authority to enter the October 31, 2014 Divorce Decree. Blanco's argument in favor of its claims of fraudulent transfer in the South Carolina Federal case was essentially that the couple was not married by common law either in Colorado where the couple had their wedding ceremony in 2001, under North Carolina's solemnization statute codified in *N.C. Gen. Stat. § 51-1*, or pursuant to South Carolina's common law statute or its recognition of the marriage contained in the Divorce Judgment. Judge Woods' Order was never overturned.

At the time the South Carolina Federal case was filed in February 2015, there was no question as to whether or not LeFebvre had priority of interest in the Property vis-à-vis Blanco in terms of the time of filing since the Divorce Decree entered October 31, 2014. Following the disclosure of the marriage, the South Carolina Federal case arguments centered on the priority rights to the Property in between Laera and LeFebvre.

On or about May 2016, LeFebvre placed the Property for sale, and on or about August 30, 2016, LeFebvre and Triple M Partners, LLC (hereinafter "Triple M") entered into a contract for a purchase price of One Million Nine Hundred Sixty Dollars and Zero Cents (\$1,960,000.00). An initial closing date was set for December 15, 2016. During the process of selling the property, Triple M commenced an action to enforce certain provisions of the sales contract, including obtaining access to the property to inspect the same. (*See R. p. 90-116*). Triple M's claims were heard, in part, by the York County Master in Equity, the Honorable Jackson S Kimball, and Triple M's claims were ultimately resolved in their favor, against LeFebvre.

Blanco filed a Motion to Intervene in the Triple M Matter on February 14, 2017. The Motion to Intervene was granted on March 13, 2017, without hearing. Blanco filed its Answer

on March 14, 2017. *See* Answer of Blanco in Triple M Case; R. pp. 078-083. Blanco did not a file a crossclaim against LeFebvre.

Blanco's Foreign Judgment was filed in South Carolina on October 3, 2014 as set forth above. (*See* R. p. 270-289). However, it was not entered on the Abstracts of Judgment or the Judgment Roll until March 3, 2017. When Blanco received notice of this occurrence, it filed a Writ of Mandamus requesting Judge Kimball enter an Order of Mandamus making the effective date of the filing of the Foreign Judgment October 3, 2014, and retroactively ordering that the Abstracts of Judgment or the Judgment Roll reflect a date of the same. Judge Kimball granted the Writ of Mandamus and entered the Order of Mandamus on February 28, 2017.

The closing on the Property was rescheduled for the week of March 13, 2017. When LeFebvre would not agree to voluntarily extend the lien rights on the real property against the Proceeds, Blanco filed a Motion for Modification of the prior Order of Default Judgment. Ultimately, after numerous hearings, on Blanco's Motion for Modification of Default Judgment, Blanco was awarded the sale proceeds in the amount of Eight Hundred Nine Thousand One Hundred Ninety and 02/100 Dollars (\$809,190.02).

The issue of who would receive the sale proceeds or had priority with respect to the sale proceeds was not noticed for hearing nor contained in any motion or brief filed with the Court. LeFebvre received notice the Trial Court had ordered the sale proceeds be disbursed from the Clerk's office to Blanco when she received the file stamped Supplemental Order on Default Judgment. On April 13, 2017, LeFebvre timely filed a Motion to Stay and Motion to Alter and/or Motion to Amend the Supplemental Order and a hearing was scheduled for April 20, 2017.

At the April 20, 2017 hearing Judge Kimball denied LeFebvre's Motion to Stay and Motion to Alter/ Motion to Amend on the premise but did not render a decision as to who had

priority to the sale proceeds. As of the April 20, 2017 hearing, the South Carolina Federal Court had also not ruled on the cross-motions for summary judgment pending in Federal Court nor was the issue of who was entitled to the sale proceeds pending before the State Trial Court. At the April 20, 2017 hearing, the following exchange occurred:

“MR. GILBERT - I think as of that day, Your Honor, the -- it was either going to be that the property gets sold and the proceeds get put aside and there’s a lien against the proceeds or it is not.

THE COURT – But my question -- it seems to me that the order -- (pause) -- decides the issue.”

(See R. p. 199, lines 4-9)

The instant case, under this appeal, was filed on or about April 18, 2017. The primary issue(s) in this case addressed questions of priority of claims between LeFebvre and Blanco, regarding the proceeds of the sale of the Property. After initial discovery, the Court granted the Respondent Appellant’s Motion for Summary Judgement after hearing on January 18, 2018. Ms. LeFebvre Appellant subsequently commenced this appeal.

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN FAILING TO RECUSE ITSELF AT THE HEARING ON JANUARY 18, 2018, BASED UPON PREVIOUS STATEMENTS?

The Trial Court's failure to recuse itself from this case, or at the very least, recuse itself until the conclusion of the appeal in a case involving many of the same issues is in error. In the April 20, 2017 Transcript, the Court clearly indicated a pre-disposed belief that the Order in the previous Triple M Case determined the priority of any claims between the LeFebvre and the Blanco. The Court's own statement that the [earlier] "order decides the issue" indicates a clear pre-disposition to rule against the LeFebvre in the instant case.

The South Carolina Appellate Court Rules (SCACR) 501 under Canon 3(E)(1) provides that a Judge should disqualify himself or herself in a proceeding in which the Judge's impartiality might be questioned. As the Court of Appeals indicated: "...a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. It is not enough for the party seeking disqualification to simply allege bias or prejudice. The party must show some evidence of that bias or prejudice. The alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge." (*State v. Jackson*, 353 S.C. 625, 627, SC Ct. App. 2003).

In the case under consideration, the Judge had clearly expressed an opinion in a previous case that was determinative as to this case. The bias stemmed from an extra-judicial source in that it came in a case other than the instant case, and such statements clearly show the Judge's inclination to rule against Ms. LeFebvre.

Counsel suggested that the Court recuse itself; in the alternative, until at least such time

as the pending appeal in the companion case was resolved. That was also denied.

As a result, the Trial Court's denial of LeFebvre's Motion to Recuse Itself was in error.

II. DID THE TRIAL COURT ERR BY GRANTING DEFENDANT APPELLANTS MOTION FOR SUMMARY JUDGEMENT BASED ON RES JUDICATA?

The Court determined in its Order that Summary Judgment was appropriate because it felt there was "no genuine issue of material fact and that the moving party [Blanco] is entitled to judgment as a matter of law." (*Simmons v Berkeley Electric Co-op, Inc.*, 419 S.C. 223, 228, 797 S.E. 2nd 387, 390, 2016). In granting a Summary Judgment Motion, the Court should consider all the documents in a case to determine if any genuine issue of fact exists. (*Thomas v Walters*, 315 S.C. 524, 526, 445 S.E.2nd 659, SC Ct. App., 1994).

In this case, the Court failed to adhere to that standard. The Court based its decision to grant Summary Judgment on the basis that the LeFebvre's allegations were barred by res judicata, and found that the elements of the previous litigation(s) were identical to the elements of this litigation (Court Order granting Summary Judgment, p. 4).

This is simply an incorrect statement of the issues before the Court. In the previous case, 2016-CP 46-3382, the Court awarded the proceeds of the sale of the property to Blanco, after determining Ms. LeFebvre was required to go through with the sale to Triple M. The Court did not specifically address the issues in the instant case, even though the Plaintiff Appellant was a party to the previous case. This case involves an equitable lien that arises out of an Order of the Family Court having priority over a later created statutory lien of a third party. It appears undisputed during the proceedings that Laera was deceptive with all parties, including his former spouse, as well as those parties with whom he did business. However, under the language of SC

Code §20-3-610 (SC Code of Laws, 1976, as amended), it provides for a special marital interest in property:

“During the marriage, a spouse shall acquire... a vested special equity and ownership interest in marital property are defined in Section 20-3-620, which equity and ownership rights are subject to apportionment between the spouses by family courts of this state...”

The Court completely failed to consider when Ms. LeFebvre’s interest arose, but it appears clear from the statute that the interest began at either the time of the marriage (2006) or at the time Laera acquired the Property, presumably at some point prior to his relocation there in 2012. As such, the Court did not properly consider, nor weigh, the creation of the spouse’s special equity interest in the property, because the Court improperly determined the issues in this case were wholly and completely identical to the issues in the previous Triple M case; they are not. Instead, the Court based part of its ruling on §20-3-670 without any consideration of defining the respective rights of the parties, nor any consideration of when Ms. LeFebvre’s special equity interest came into existence, nor any weighing of interests between the parties.

As a result, the Court’s granting of Summary Judgment to the Respondent Defendant based upon res judicata was in error.

CONCLUSION

The Court of Appeals should reverse the Trial Court's Order granting Blanco's motion for dismissal of this action on Res Judicata, and should also find that the Court failed to properly recuse itself either in whole, or until at least such time as the companion case had been resolved on appeal. Accordingly, the Plaintiff Appellant Suzette LeFebvre requests this Court overturn the granting of Summary Judgment, and remand the case to the York County Court of Common Pleas for such further proceedings as might be appropriate.

Respectfully submitted, this 19th day of February, 2019

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York County Master in Equity

Appellate Case No. 2018-000411

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SC Court of Appeals

Suzette LeFebvre.....Appellant

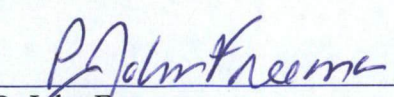
vs.

Blanco GmbH+CO.KG.....Respondent

PROOF OF SERVICE

I hereby certify that I am the attorney for the Appellant in the above-captioned matter and that I did on February 19, 2019 serve one copy of the FINAL BRIEF OF APPELLANT and SCACR 211(b) CERTIFICATION OF APPELLANT COUNSEL on counsel for the party listed below by US mail, postage pre-paid, and addressed as follows:

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