

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-001064

Patrick Bowie,

Respondent,

v.

Woodbine Estates, LLC,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE APPELLANT CAN ARGUE THE TRIAL COURT ERRED BY GRANTING ITS AGENT A DIRECTED VERDICT BUT NOT THE APPELLANT WHERE THE APPELLANT DID NOT RAISE THAT ISSUE TO THE TRIAL COURT.
2. WHETHER THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR DIRECTED VERDICT WHERE AN AGENT OF THE APPELLANT WAS GRANTED A DIRECTED VERDICT ON THE SAME CLAIM BY THE TRIAL COURT.

STATEMENT OF THE CASE

The Respondent ("Bowie") served a Summons and Amended Complaint against the Appellant ("Woodbine Estates") and Dr. Bobby Crosby on July 5, 2011. Bowie's cause of action against Woodbine Estates was for conversion, which was denied by Woodbine Estates. (R. pp. 25-28.)

The case proceeded to trial on April 16, 2013. At the close of Bowie's case, Dr. Crosby and Woodbine Estates made a motion for a directed verdict. (R. p. 71, lines 14-25.) The Court granted Dr. Crosby's motion for directed verdict on the ground that there was insufficient evidence proving that Dr. Crosby personally converted Bowie's personal property. (R. p. 79, lines 3-5.) The Court, however, denied Woodbine Estates' motion for a directed verdict because a question of fact existed as to whether Woodbine Estates had converted Bowie's personal property. (R. p. 82, lines 6-20.) Woodbine Estates renewed its motion for a directed verdict at the close of its case, and the Court again denied the motion. (R. p. 115, line 24 – p. 116, line 17.)

The jury found Woodbine Estates had converted Bowie's personal property and returned a verdict of \$15,000.00 in favor of Bowie. At the conclusion of the case, Woodbine Estates made motions for a judgment notwithstanding the verdict and a new

trial absolute, which renewed its directed verdict motion that the lawsuit should be dismissed for failure to prove the elements of conversion. The motions were denied and the judgment in favor of Bowie was entered on April 22, 2013. (R. pp. 20-21.) Woodbine Estates filed a notice of intent to appeal on May 3, 2013.

FACTS

In 2009, Bowie stored all of his personal property in his cousin Ray Bowie's ("Ray") house at 101 Mill St. (R. pp. 29-30.) Bowie's personal property that he could not recover included a 1984 Harley Davidson, motorcycle accessory items, model trains, train memorabilia, magazines, books, furniture, photographs, tools, and clothing. (R. pp. 30-45; 9-13.) Bowie valued his personal property at \$29,556.28. (R. p. 45, line 22.) Ray and a man named Darryl Kuenzer placed Bowie's items in the house, which was locked and secured. (R. pp. 91-92.)

Ray lost the house at a tax sale, where it was purchased by Woodbine Estates. Dr. Crosby and his wife are fifty percent (50%) partners in Woodbine Estates. In January 2010, Woodbine Estates had the locks changed. (R. p. 61, lines 23-25.) When Bowie learned that Ray had lost title and possession of the house, he called Dr. Crosby to ask whether he could retrieve his items from the house. (R. p. 46, lines 1-4.) Dr. Crosby would not allow Bowie to retrieve his items, saying his insurance company would not allow it, that he could not differentiate between Bowie's and Ray's items, and that he owned all of the items in the house. (R. p. 38, lines 1-15.) Bowie then had Ray and mutual friends James Jackson and Jon Porter contact Dr. Crosby to see whether he would allow Bowie to retrieve his items. These efforts did not succeed in Bowie getting his items back. (R. p. 46, line 18 – p. 47, line 10; pp. 50-51; pp. 69-70.)

Woodbine Estates hired Greg Gray to clean out the house and remove its contents to the street. (R. p. 89, lines 3-8.) In June, Greg Gray and some unidentified people cleaned out the house for Woodbine Estates and removed its contents. (R. p. 49, lines 11-15; p. 52, line 7 – p. 53, line 15.) Bowie spent four days on Mill Street recovering what personal items he could after some items were placed on the street. (R. p. 47, lines 11-20; pp. 54-57; p. 58, lines 10-21; p. 63, lines 4-13.) Bowie could not find any of the items above that he listed and submitted into evidence. (R. p. 48, lines 7-15.)

ARGUMENTS

- I. BECAUSE THE APPELLANT DID NOT RAISE THE ARGUMENT BELOW, IT IS BARRED FROM ARGUING THE VERDICT AGAINST IT SHOULD BE VACATED ON THE GROUNDS THAT THE CLAIM AGAINST ITS AGENT WAS DISMISSED

The state's issue preservation rules require that an issue be raised and ruled upon by the trial court before it can be heard by the appellate courts. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). "It is axiomatic that an issue cannot be raised for the first time on appeal." Id.

Woodbine Estates argues that the verdict against it should be dismissed because its agent Dr. Crosby was granted a directed verdict at the close of Bowie's case. The trial record, however, shows no mention of this argument by Woodbine Estates. (R. pp. 71-83.) Instead, Woodbine Estates' argued conversion had not been proved because no evidence showed it received a benefit and that it had no contractual duty to preserve Bowie's items. (R. pp. 72-74.) At the conclusion of its case, Woodbine Estates renewed its motion for a directed verdict and again only argued that it should be granted because

no benefit to Woodbine Estates had been established. (R. pp. 115-19.) After the jury returned a \$15,000.00 verdict in favor of Bowie, Woodbine Estates made motions to reconsider its directed verdict motion, for a JNOV, and for a new trial absolute. Once again, Woodbine Estates did not argue that it should be dismissed because Dr. Crosby had been dismissed from the lawsuit. (R. pp. 120-21.)

II. THE COURT SHOULD NOT VACATE THE JUDGMENT AGAINST WOODBINE ESTATES MERELY BECAUSE ONE OF ITS AGENTS WAS GRANTED A DIRECTED VERDICT FOR THE SAME CLAIM.

If the evidence presented creates a genuine issue of material fact, then the case is not proper for summary judgment, directed verdict, or judgment notwithstanding the verdict and should be submitted to the jury. See, e.g. Moseley v. Oswald, 376 S.C. 251, 254, 656 S.E.2d 380, 381 (2008).

The doctrine of respondeat superior holds a master vicariously liable for the tort of his servant if the tort is committed within the scope of employment. Austin v. Specialty Transp. Serv., Inc., 358 S.C. 298, ___, 594 S.E.2d 867, 877 (Ct. App. 2004) (citing South Carolina Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct.App.1986)). A plaintiff has the option of suing the agent, the principal, or joining them both. Id. at ___, 594 S.E.2d at 878.

In Austin, the Plaintiffs obtained a default judgment against a truck driver and his employer. Id. at ___, 594 S.E.2d at 870. The plaintiffs later dismissed their claims against the truck driver. Id. The Court of Appeals held that the dismissal of the servant did not prevent the plaintiffs from recovering damages from the master based on its servant's actions. Id. at ___, 594 S.E.2d at 878.

Woodbine Estates relies upon Chapman-Storm Lumber Corp. v. Minnesota-South Carolina Land and Timber Co., 183 S.C. 31, 190 S.E. 117 (1937), for the proposition that where the principal and agent are sued together for the same act so that the principal's liability rests solely upon the agent's conduct, a verdict against solely the principal will not stand. The present case is actually controlled by Weeks v. Carolina Power & Light Co., 156 S.C. 158, 153 S.E. 119 (1930).

In Weeks, the plaintiff sued a power company and its district manager in tort. Id. at ___, 153 S.E. at 120. The jury returned a verdict in favor of the plaintiff against the power company but found no liability on the part of the district manager. Id. Evidence presented at the trial showed that the plaintiff's injuries occurred because of the negligent acts of other agents of the power company. Id. at ___, 153 S.E. at 121. The Supreme Court thus upheld the judgment:

If a delict be charged against both the master and the servant, or against the master and the servant and other agents of the master, and it is shown by the evidence that the delict was committed by the master through some other servant than the servant sued with the master, a verdict against the master alone may be rendered.

Id.

In the present case, Dr. Crosby testified that he and his wife were 50% partners in Woodbine Estates. (R. p. 87, lines 4-8.) The Court granted a directed verdict in favor of Dr. Crosby at the end of Bowie's case because Woodbine Estates, rather than Dr. Crosby, was the owner of the real property where Bowie's items were taken from. (R. p. 78, line 25 – p. 79, lines 1-6.)

Evidence at trial showed that agents of Woodbine Estates other than just Dr. Crosby committed the actions that constituted conversion. Dr. Crosby testified that

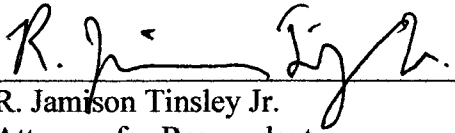
Woodbine Estates hired Greg Gray to “clean out the house, to remove the items from the house.” (R. p. 89, lines 4-5.) Bowie testified that Gray and some other people cleaned out the house. (R. p. 49, lines 7-18.) Jeff Bragg testified he had to pick up the items left on the street. (R. p. 52, lines 7-24.) Bragg testified he saw some people including Greg Gray throwing items from the house onto the street. (R. p. 52, line 25 – p. 53, line 5.) He testified he saw Gray “pull up and go into the house and get something and put it on his truck.” (R. p. 53, lines 8-10.) Bragg described the item Gray loaded onto his truck as being in a pretty big box. (R. p. 53, lines 11-15.)

This evidence proves that agents of Woodbine Estates other than Dr. Crosby participated in removing Bowie’s items from the house. The trial judge, therefore, properly submitted the conversion claim against Woodbine Estates to the jury because the jury could reasonably find that agents of Woodbine Estates other than Dr. Crosby converted Bowie’s personal property while in the scope and course of employment for Woodbine Estates. As in Weeks, it was proper for the Court to dismiss the tort claim against Dr. Crosby, an agent of Woodbine Estates, but submit the claim against Woodbine Estates, the principal, to the jury.

CONCLUSION

Based upon the arguments stated above, this Court should affirm the judgment from the trial court.

Respectfully submitted,



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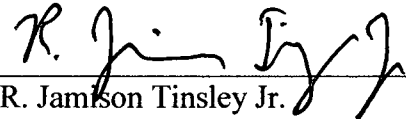
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CERTIFICATE OF COUNSEL

Counsel for the Respondent hereby certifies that the Final Brief for Respondent complies with Rule 211(b).



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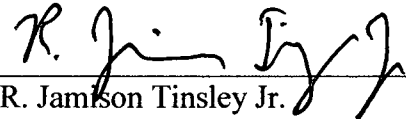
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