THE STATE OF SOUTH CAROLINA

ORIGINAL

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

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Case No. 2012-CP-07-1530
Court of Appeals No. 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
Ann Gilleland, LLC,

Appellant.

FINAL REPLY BRIEF OF THE APPELLANT

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I. THE RECORD ON APPEAL CONTAINS AMPLE EVIDENCE THAT THE RESPONDENT WAS THE DRAFTER OF THE SUBJECT LEASE, AND THEREFORE, ANY AND ALL AMBIGUITIES IN SUCH LEASE SHOULD BE RESOLVED AGAINST THE RESPONDENT.

Respondent claims, incorrectly, that the "record is devoid of any testimony as to who prepared [the lease]. Counsel's own statements and arguments to the Court that the landlord drafted the lease are clearly not admissible testimony as to this issue." Respondent's Brief, p. 10. Respondent fails to recognize or acknowledge that the "Counsel" referred to ***is*** the Appellant in this matter, and although she is a member of the South Carolina Bar, she ***represented herself*** in this action.[1] As is demonstrated below, it is simply inaccurate to allege the record contains no testimony or evidence to support the fact the Respondent drafted the lease. In fact, the record does not and cannot support any other conclusion.

A significant portion of the Appellant's cross examination of Mr. Paul Watson included questions about the lease in this action, the entirety of which clearly presumed that Mr. Watson had drafted the lease.[2] This fact was obviously known and recognized by both the witness, Mr. Watson, and Ms. Prince, the opposing party to the action, acting as her own counsel. During questioning, Ms. Prince refers to Mr. Watson as the drafter of the lease, without any objection from the Respondent: "I think that we need to go to

[1] The undersigned *pro se* Appellant has prepared all briefs in this matter in the third person.
[2] Mr. Watson is the principal of the Respondent entity, Bluffton Towne Center, and the sole witness at trial for same.

the intention of the parties. He [Mr. Watson] is the one that drafted the lease presumably when he presented it to me."[3] R., p. 48, lines 11-13.

The Appellant's next line of questioning was directed to changes in the content from the lease between the parties and those of subsequent tenants, which again clearly presumed an understanding between Mr. Watson and Ms. Prince that Mr. Watson had, in fact, drafted the lease in the subject action, to wit:

> Q. ....For your new tenant, you have changed your lease, haven't you?
>
> A. Yes.
>
> Q. You changed it significantly, haven't you? You have gone from about four pages to close to twenty probably?
>
> A. Yes.
>
> R., p. 56, lines 1-7.

If Mr. Watson had not drafted the lease, it would be inappropriate and confusing for the parties to refer to the lease as being "his" lease. Yet, no one appears remotely confused by Ms. Prince repeatedly asking Mr. Watson about "his" lease. Moreover, she never once refers to it as "our" or "my" lease. Again, the Respondent makes no objection during this line of questioning on the basis of Mr. Watson's status as drafter of the lease. Further, during Respondent's objection to relevance of the line of questioning, he states, "[T]here could be a million different reasons why he is using a different lease forward." R., p. 57, lines 22-24. Respondent's counsel's own statement implies or suggests that Mr. Watson "used" a certain lease, which necessarily implies he is the drafter of such lease.

[3]Although this line of questioning drew several objections from the Respondent on the basis that the questions allegedly required the witness to make a legal interpretation or opinion of the meaning of certain lease terms, ***no*** objection was made regarding the status of Mr. Watson as the drafter of the lease.

Interestingly, after Appellant's cross examination of Mr. Watson, counsel for the Respondent asked Mr. Watson another 20 questions. Never once does he ask Mr. Watson if he or Ms. Prince drafted the lease, thereby giving him an opportunity to clear up any potential misunderstanding as to which party drafted the lease. The reason for this, of course, is obvious. It is not until closing arguments that the Respondent shocks the Appellant with the outrageous claim that no testimony existed that Mr. Watson drafted the subject lease, to wit:

> MS. PRINCE: ...I will say this, Mr. Watson does this for a living. He drafted that lease.
>
> MR. PATTERSON: Your honor, I would object to that. There is no testimony that he drafted the lease.
>
> MS. PRINCE: I thought I had asked that question but perhaps I didn't. He is the one that presented the lease to me. Either he drafted or somebody drafted it on his behalf.
>
> MR. PATTERSON: Or the Defendant drafted it because we don't have any testimony as to who drafted it so we have to cover all the options.
>
> MS. PRINCE: I am representing I did not draft this.
>
> COURT: We are just in argument.
>
> MS. PRINCE: I didn't draft the lease nor did I make any amendments or modifications to it....

R., pp. 75-76, lines 17-25; 1-12.

The question of "Who Drafted the Lease" was not an impossible mystery to solve. At this point in the proceedings, both Mr. Watson and Ms. Prince were still present. It was a non-jury trial. Mr. Patterson could have moved to have the proceedings reopened to question his client and clear up this crucial issue which heretofore had never been in dispute. Yet, he did not. Mr. Patterson could have objected to the Court considering any statements by the Appellant during argument, which were allegedly not testified to, and

requested such matter be stricken from the record. Yet, he did not. Moreover, Mr. Patterson could have requested the Court allow him to cross examine Ms. Prince if the Court were to refuse to strike such statements from the record, had the proper objection been made in the first place. However, no proper move to strike was ever made. Once a statement is on the record, in order to preserve the issue of the statement's admissibility, the party must make a motion to strike. *See,* State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). In this instance the issue of whether or not the Court could or should consider Ms. Prince's statements that Mr. Watson was the drafter of the lease is not preserved for appeal. Even if this Court were to disregard any statements made by Ms. Prince, the record still contains ample evidence to support Mr. Watson as the drafter of the subject lease.

CONCLUSION

Therefore, based upon the foregoing, the Court should determine that sufficient evidence in the record supports the fact that the Respondent was the drafter of the lease in the subject action, and as such, any and all ambiguities in such lease should be resolved against the Respondent.

The Appellant hereby re-incorporates and restates her Initial Brief in its entirety and for the reasons expressed therein, as well as those expressed above in the Appellant's

Reply Brief, the Appellant respectfully requests this Court to reverse the trial court's ruling.

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Pro Se Appellant

Bluffton, SC
January 6, 2014

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PROOF OF SERVICE

I certify that I have served the Appellant's Final Brief and Final Reply Brief on the Respondent, Bluffton Towne Center, LLC, by depositing a copy of it in the U.S. Mail, postage prepaid, on January 13, 2014, addressed to its attorney of record, Russell P. Patterson, PO Box 8047, Hilton Head, SC 29938.

January 12, 2014

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CERFIFICATE OF COMPLIANCE WITH RULE 211, SCACR

I certify that I the Appellant's Final Brief and Final Reply Brief, filed and served on today's date, are both in compliance with Rule 211, SCACR.

January 12, 2014

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