

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit

Case Number: 2014-000139

Shou [redacted] Martin, ... Appellant,

vs

Wilmer (John) Rife and Barbara Ann Doomey, ... Respondent.

FINAL REPLY BRIEF OF APPELLANT

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Question I

Did the trial judge err in granting a judgment notwithstanding the judgment when the record contained evidence that Shou Martin owned the property sold to Wilmer John Rife and Barbara Doomey?

Shou Martin has standing to litigate her ownership of any and all property she personally furnished to her son to operate his business. The issue in this case is was Mrs. Martin the owner of the property. The jury resolved that question against Wilmer Rife and Barbara Ann Doomey.

When Mr. Rife and Ms. Doomey state "An Appellate Court may not overturn the decision of the Trial Court under the State standard, if there is any evidence to support the Trial Court's ruling." Br. of Resp. at 7. This statement confuses the standard of review. This Court does not, as suggested, review this record to determine if there is any evidence of no evidence. The standard is the same for the trial judge as this court - if there is a scintilla of evidence the case should be submitted to the jury. As the South Carolina Supreme Court has said "under the Scintilla rule which prevails in South Carolina, if there is a scintilla of evidence, which is any material evidence that if true would tend to establish the issue in the mind of a reasonable juror the case should be submitted to the jury for its determination." *Woodle v. Brown*, 223 S.C. 204, 210, 74 S.E.2d 914, 917 (1953). This Court must look not to see if there is any evidence to sustain the JNOV granted by the trial judge, but whether there is a scintilla of evidence to sustain the verdict of the jury.

The Respondent has argued "Contrary to the argument of the Planitff, as to the evidence required to support the granting of a Motion for JNOV, the scintilla reference has no

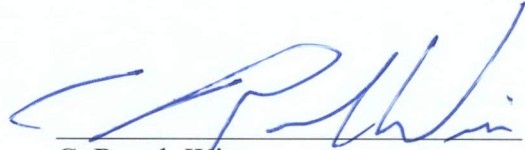
bearing on this Court's review." Br. of Resp. at 7. This conclusion is incorrect. As this Court has said "Our scope of review requires us to examine the record to determine whether the trial judge viewed the motion for judgment n.o.v. in a light most favorable to [plaintiff]" *Smith v. Safeco Life Ins. Co.*, 303 S.C. 131, 135, 399 S.E.2d 427, 429 (Ct. App. 1990). Thus, this Court reviews the transcript in the light most favorable to Mrs. Martin with all reasonable inferences being against Mr. Rife and Mrs. Doomey. *See, also, Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 64, 352 S.E.2d 284, 285 (Ct. App. 1986)(a judgment must be affirmed on appeal where there is any evidence to support the factual findings implicit in the jury's verdict and that the party opposing the motions for directed verdict and judgment notwithstanding the verdict is entitled to all favorable inferences where the evidence is conflicting. Because a JNOV was granted, this Court does not review the evidence in the light most favorable to the Respondents.

The Respondent appears to argue that the testimony of Mrs. Martin is not evidence for only under such a conclusion can the JNOV of the trial judge be sustained. Certainly the testimony of the plaintiff that she owned the property she sold is material evidence of the fact that she owned the property. If Mrs. Martin did not own the property, to whom should the Respondent have paid the money they, by contract, owe. They appear to argue they are not required to pay for the equipment they purchased.

CONCLUSION

As the evidence at trial established material evidence that Shou Martin owned the property she sold, the granting of the Judgment Notwithstanding the Verdict should be reversed and the verdict of the jury re-instated.

September 24, 2014



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Shou Y. Martin, ... Appellant,

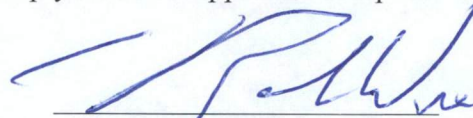
VS

Wilmer (John) Rife and Barbara Ann Doomey, ... Respondent.

CERTIFICATE OF COUNSEL

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

September 30th, 2015



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