

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
The Honorable Mikell Scarborough
Master in Equity

SEP 28 2016

SC Court of Appeals

Case No. 2010-CP-10-7241

JOHN M. ENGLISH..... APPELLANT,

v.

ELLEN SEXTON and JOHN E. WHITE, JR., RESPONDENT.

APPELLANT'S FINAL BRIEF

SMITH/CLOSSER, P.A.

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Cases:

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| <i>Weil v. Weil</i> , 299 S.C. 84, 382 S.E.2d 471 (1989) | 2 |

I. FACTS AND PROCEDURAL POSTURE

The parties to this action lived together for a period of some years, and owned both real and personal property in common. On August 4, 2011, the Honorable Richard E. Fields, as Arbitrator, entered an Order resolving all of the issues that had not previously been settled between the parties, including the relative interest of each party to ownership of certain real property, and the allocation of certain personal property between the parties. Certain matters involving the sale of the real property were the subject of several subsequent orders, principally dealing with the manner in which the property was to be sold.

A confirmation hearing was held on August 25, 2014, before the Honorable Mikell Scarborough, Master in Equity of Charleston County. By the time of the hearing, the real property had been sold, and Counsel for Appellant was holding the sum of \$72,000 in escrow. The principal issue remaining in this action is the disposition of a Ford Explorer vehicle currently being driven by Appellant. The Master found that the Arbitrator, in turn, had concluded that Respondent made all payments on the loan for this automobile, and confirmed the Arbitrator's decision that Appellant was required to reimburse Respondent in the sum of \$19,626.80, at which time Respondent was to sign over the title to Appellant. The Master also ordered that Counsel, as escrow agent, pay Appellant's former attorney, John White, the sum of \$18,112.69, pursuant to a fee agreement. Neither the Arbitrator nor the Master discussed what would occur in the event Appellant failed to reimburse Respondent for her payments on the Explorer.

II. ARGUMENT

A. The Arbitrator's Order Is Ambiguous With Respect to the Ford Explorer.

The Arbitrator's Order, confirmed by the Master in Equity, provides that "[Appellant] shall be entitled to continue in possession of the said automobile until the residence is sold and shall be entitled to the title and ownership of the Ford Explorer automobile upon reimbursement to the [Respondent] of . . . all the payments made by the [Respondent]..." This statement is clear insofar as it might be Appellant's desire to retain possession of the vehicle. It does not address what is to occur if Appellant chooses not to do so. Although there is, at this time, no indication as to whether Appellant wishes to keep this car or possibly return it to Respondent, the Order does not provide any details as to how this matter is to be handled in that eventuality.

"In construing an ambiguous order . . ., the determinative factor is to ascertain the intent of the judge who wrote the order." *Eddins v. Eddins*, 304 S.C. 133, 135, 403 S.E.2d 164, 166 (Ct. App. 1991)(citing *Weil v. Weil*, 299 S.C. 84, 382 S.E.2d 471 (1989)). In this instance, however, it is impossible to determine the intent of the Arbitrator, as the issue is simply not addressed in any manner.

Should Appellant wish to keep the Explorer, the intent of the Arbitrator is clear: in order to do so, he must pay Respondent a total of \$17,626.80, the sum she expended on its purchase. Implicit in any installment purchase agreement, however, is the possibility that the buyer will decide not to continue to make payments, and will instead face the consequences and return the car to the seller. The consequences are, in normal circumstances, a corresponding and negative effect on the buyer's credit rating. There exist, however, no terms defining the procedure or the outcome should Respondent in this case decide not to keep the car, and correspondingly decide not to pay Respondent any money.

Further, since the money is not being held in escrow, and the Order does not address any possibility that Appellant will elect to return the car to Respondent, there is similarly no discussion of the steps the Escrow Agent is to take should this occur. An escrow agent may not simply disburse funds held by him in any manner he should decide; in a case such as this, where the funds are being held pending disposition by the Court, there exist at this juncture no instructions as to distribution should Appellant decide not to retain possession of the car.

B. The Master Erred in Failing to Defer to the Fee Resolution Committee the Matter of Fees Potentially Owed to Appellant's Former Attorney.

Appellant was not able to return to Charleston for the hearing before the Master in Equity. As Counsel for Appellant explained, Appellant is an employee of the federal government and, because of the timing of the hearing, was unable to return from the West Coast to participate. Nevertheless, Counsel informed the Trial Court that Appellant had filed a fee dispute with the South Carolina Bar Association regarding the amount of the fees due to his former attorney, John White. Despite the raising of this issue before the Master in Equity, the Master declined to delay any ruling on the amount of the fees he determined to be due to Mr. White. Appellant did not have an opportunity to present to any court or board his concerns regarding this figure, and this matter had, by the time of the hearing, already been presented to a forum specifically designed to resolve these matters. Appellant believes that the matter of fees should have been dealt with by the Fee Dispute Committee of the South Carolina Bar Association.

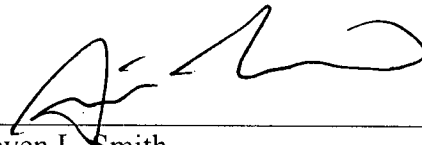
CONCLUSION

Appellant would respectfully request that this Court remand this matter for resolution by the Arbitrator of the possibility that Appellant will decide to return the Ford Explorer to Respondent, and for instructions to the Escrow Agent in the event he does so. In addition,

Appellant would respectfully ask that the decision of the Master in Equity be reversed with respect to the amount of fees due to John Evander White, and this matter presented to the South Carolina Bar Association for resolution.

Respectfully submitted,

SMITH/CLOSSER, P.A.



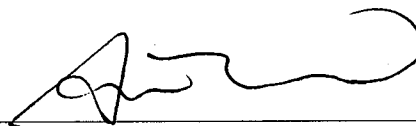
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9-23, 2016
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellants' Final Brief is in compliance with Rule 211 (b) of the South Carolina Rules of Appellate Procedure.

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