THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No.: 2019-000181

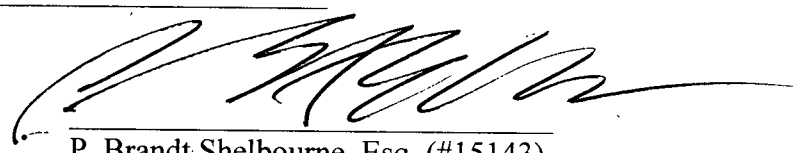
M.R. Jackson Construction, LLC, ...Appellant

vs.

State Farm Insurance and

Barbara J. Fields, ...Respondents,

RESPONDENT BARBARA J. FIELDS INITIAL BRIEF



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STATEMENT OF THE CASE

Appellant has a separate Mechanic's Lien suit pending against Respondent, filed on January 24, 2017 following construction of Respondent's home. See Plaintiff's Complaint, para. 12. That separate Mechanic's Lien suit has not yet been heard. Id. On or about April 21, 2018, a fire destroyed Respondent's home. Id., para. 13. Co-Defendant State Farm had the fire insurance coverage. Id., para. 13 & 14. Prior to State Farm paying any funds under Respondent's homeowner's insurance policy, Appellant filed this separate suit against Respondent and her homeowner's insurance company State Farm Insurance on May 29, 2018 alleging causes of action for Interpleader and Constructive Trust seeking to enjoin State Farm from paying those insurance proceeds to Respondent. See Complaint. Respondent answered denying Appellant's claims and counterclaimed for Tortious Interference with Contractual Relations and Frivolous Proceedings on July 19. 2018. See Answer and Counterclaim. Co-Defendant State Farm answered on June 8, 2018 also denying Appellant's claims. See St. Farm's Answer. Appellant responded to Respondent's counterclaims on July 31, 2018. See Reply. By Consent Order dated September 18, 2018, Appellant subsequently agreed to allow State Farm to pay a portion of the insurance proceeds to pay off the mortgage on the property. See Consent Order.

Respondent in its Answer and Counterclaims to Plaintiff filed a Motion to Dismiss Appellant's claims on July 19, 2018 with a Memorandum of Law in Support filed on October 11, 2018. See Answer and Counterclaims and Memorandum in Support of Motion to Dismiss. Appellant filed a Memorandum in Opposition. See Appellant's Opposition. The Lower Court held a hearing on October 15, 2018 and on December 7, 2018, entered an Order dismissing Appellant's claims. See Order. The Lower Court denied Appellant's Motion for Reconsideration on January 7, 2019. See Order. Appellant appealed.

STANDARD OF REVIEW

"Under Rule 12(b)(6) of the S.C.R.C.P. a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The Appellate Court applies the same standard of review as the trial court in reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Id. A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id.

ARGUMENTS

I. THE TRIAL COURT CORRECTLY DISMISSED APPELLANT'S CAUSES OF ACTION FOR INTERPLEADER AND CONSTRUCTIVE TRUST WHERE APPELLANT CLAIMED IT WAS INEQUITABLE FOR STATE FARM INSURANCE TO PAY TO RESPONDENT FIRE INSURANCE PROPERTY DAMAGE INSURANCE PROCEEDS DUE AND PAYABLE TO RESPONDENT AND THAT THE FUNDS SHOULD BE HELD IN TRUST BY THE COURT WHEN APPELLANT ALLEGED IN ANOTHER, SEPARATE LAWSUIT THAT IT HAD A VALID MECHANIC'S LIEN.

The trial court correctly dismissed Appellant's causes of action in this matter. Appellant sued Respondent for Interpleader and Constructive Trust. See Complaint. However, at the hearing, Appellant conceded that this was an action for a type of reverse interpleader and that he is seeking equity. See Transcript p. 9, l. 10-14; p. 10, l. 10-13. The Interpleader cause of action

seeks a court order requiring State Farm "to hold the property damage insurance proceeds in trust pending the determination of Jackson's lien rights." See Complaint, para. 21. Likewise the Constructive Trust cause of action "seeks a declaration that State Farm hold[] the property damage claim funds for the Fields house in trust for the benefit of Jackson." Id., at para. 29.

Appellant's first cause of action, although plead as Interpleader, clearly is not an interpleader action. "The historical and still the primary purpose of interpleader is to enable a neutral stakeholder, usually an insurance company or a bank, to shield itself from liability for paying over the stake to the wrong party. This is done by forcing all the claimants to litigate their claims in a single action brought by the stakeholder." First Union Nat. Bank of South Carolina v. FCVS Communications, 469 S.E.2d 613, 616, 321 S.C. 496, 499 (Ct. App. 1996) dismissed in part and reversed in part on other grounds First Union Nat. Bank of South Carolina v. FCVS Communications, 328 S.C. 290, 494 S.E.2d 429 (1997) quoting Indianapolis Colts v. Mayor of Baltimore, 733 F.2d 484, 486 (7th Cir.1984). State Farm has not joined in Appellant's request for Interpleader and has denied that Appellant is entitled to that Injunctive relief. State Farm is not seeking to shield itself from liability. Appellant admitted this at the hearing, acknowledging that this was a type of "reverse interpleader." In reality both causes of action seek equitable relief.

The first cause of action seeks an order to require State Farm to hold the funds in trust and the second couches the request as a declaration that State Farm hold the funds in trust. Both request that State Farm hold the funds in trust and not pay them to Respondent per Respondent's contract with State Farm. To obtain injunctive relief, the requesting party must at least allege that it will suffer irreparable harm if the injunction is not granted, that it will likely succeed in the litigation and that there is an inadequate remedy at law. See Strategic Resources Co., et al v. BCS Life Ins.

Co., et al., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). See also Scratch Golf Co. v. Dunes West Residential Golf Props., Inc., 361 S.C. 117, 603 S.E.2d 905 (2004).

Nowhere in Appellant's Complaint does it allege that it will suffer irreparable harm if the injunction is not granted. Neither does it allege that it lacks an inadequate remedy at law.

Appellant admits in the Complaint that it has a pending action at law against Respondent. See Complaint, para. 12. Appellant's mechanics' lien action is an adequate remedy at law. "The foreclosure of a mechanics' lien is an action at law." Cohen's Drywall Co., Inc. v. Sea Spray Homes, LLC, 374 S.C. 195, 198, 648 S.E. 2d 598, 599 (2007). A party is not entitled to equity where there is an adequate remedy of law. Nutt Corp. v. Howell Rd., LLC, 396 S.C. 323, 327 – 328, 721 S.E.2d 447, 449-450 (Ct. App. 2011) citing EllisDon Constr. Inc. v. Clemson Univ., 291 S.C. 552, 555, 707 S.E.3d 399, 401 (2011). "An 'adequate' remedy of at law is one which is certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." Nutt Corp., 396 S.C., 328, 721 S.E.2d 450, quoting Milliken & Co. v. Morin, 386 S.C. 1, 8, 685 S.E. 2d 828, 832 (Ct. App. 2009). Appellant is "not entitled to an injunction because [it has] ... an adequate remedy at law." Strategic Resources Co., et al, 367 S.C. at 545, 627 S.E.2d at 689. See also Scratch Golf Co. v. Dunes West Residential Golf Props., Inc., 361 S.C. 117, 603 S.E.2d 905 (2004).

The Nutt Corp. Court went on to hold that there was an adequate remedy at law "because there was a contractual agreement between that parties." Nutt Corp., 396 S.C., 328. Appellant in this case acknowledges in the Complaint that it has a contract with Respondent. See Complaint, para. 6 & 7. Further, nowhere does Appellant allege in its Complaint that the separate Mechanic's Lien action does not provide an adequate remedy at law. Assuming solely for the sake of argument that Appellant is entitled to foreclose on its mechanics lien in the separate suit, it is a legal action

and provides an adequate remedy at law, thus precluding the equitable remedy Appellant seeks in this Complaint.

II. THE TRIAL COURT CORRECTLY FOUND THAT THERE WERE NO FACTUAL DISPUTES THAT WOULD PRECLUDE DISMISSING APPELLANT'S EQUITABLE CLAIMS WHERE IT HAD AN ADEQUATE REMEDY AT LAW

Appellant attempts to argue that its claim that Respondent owes Appellant $119,000.00 as alleged in a separate, mechanic's lien suit, is evidence of a factual dispute that precludes the court entering judgment. Whether that money is owed is a dispute in that separate case as Appellant concedes by alleging that the separate lawsuit is "pending". See Complaint, para. 12. Appellant's own Complaint in this case acknowledges that the allegation that Respondent owes it money is simply that – an allegation and not a fact.

Appellant can point to no factual issues that require further development for this case. Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs., 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001). ("As a general rule, important questions of novel impression should not be decided on a motion to dismiss. Where, however, the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss."); Byrd v. Irmo High Sch., 321 S.C. 426, 440, 468 S.E.2d 861, 869 (1996) (holding when the parties' disagreement centers not on the underlying facts of the case, but rather on the interpretation of the law, further developing the record beyond the motion to dismiss stage is not necessary as it would not aid in the resolution of the issues presented)

III. THE TRIAL COURT CORRECTLY FOUND THAT APPELLANT HAD NO EQUITABLE LIEN IN THE RESPONDENT'S STATE FARM INSURANCE PROCEEDS

Although not alleged in the Complaint, in Appellant's Memorandum in Opposition and at the hearing, Appellant argued that he should prevail on the motion because he had an equitable lien against the funds "because it allegedly holds an equitable lien against the State Farm funds under the insurance policy." See Order p.2. "For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for payment of the debt." Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011) (quoting First Fed. Sav. & Loan Ass'n of S.C. v. Finn, 300 S.C. 228, 231, 387 S.E.2d 253, 254 (1989)). In the present case there is no allegation in Appellant's Complaint that there was an intent by the Appellant, let alone the Respondent, that the insurance proceeds serve as security for payment of the debt. There is no legal authority to support Appellant's argument that the alleged debt attaches to the insurance proceeds without intent.

Further, there is no debt yet determined. Even if the debt was determined for purposes of this matter, the debt would have to attach to the insurance proceeds which are the property in question and there be an express or implied intent that those proceeds serve as security for the debt. That is not the case here. There is no allegation in Appellant's Complaint that the parties intended that insurance proceeds would serve as security for monies due to Appellant.

Appellant's reliance on First Union Nat. Bank of South Carolina v. FCVS Communications, 469 S.E.2d 613, 616, 321 S.C. 496, 499 (Ct. App. 1996) dismissed in part and reversed in part on other grounds First Union Nat. Bank of South Carolina v. FCVS Communications, 328 S.C. 290, 494 S.E.2d 429 (1997) is misplaced. In that case the parties were challenging the right of the First Union to file an interpleader action when there were several

parties claiming ownership of the funds held by First Union. That is not the case here. State Farm has the funds and Respondent is the insured. See Complaint, para. 14. Respondent paid the insurance premiums and is the named insured. Id. Appellant, through the Mechanic's Lien is at best seeking a judgment against Respondent for the alleged failure to pay what Appellant claims is owed for construction of the house.

Appellant does not claim that it has an ownership interest in the insurance benefits. Appellant specifically states that State Farm owes the money to Respondent for the cost to rebuild the house. See Complaint, para. 18. Appellant does not claim that State Farm should pay the money to Appellant under some right. Appellant does not allege that it is a named insured. Unlike the parties in First Union v. FCVS, supra, Appellant makes no direct claim to the funds whatsoever.

Further, as the Trial Court noted, Appellant has a legal remedy. What it should do is proceed with the other suit, and if it is successful, obtain a monetary judgment. It would then execute on that judgment and if Respondent cannot meet that judgment amount, the real property would be sold to satisfy the judgment. Only after that, and then only if the real property did not satisfy the judgment amount, would Appellant be able to pursue other assets that Respondent may have. In this case though, Appellant attempts to short circuit its obligations to proceed with the case. It attempts to claim that it has a right to funds for which it did not contract and for which it did not pay.

IV. THE TRIAL COURT CORRECTLY DISMISSED THE CLAIM OF CONSTRUCTIVE TRUST WHERE APPELLANT DOES NOT ALLEGE FRAUD OR WRONGDOING OF ANY KIND

Although pled as a Constructive Trust cause of action, Appellant does not allege the elements of Constructive Trust. "A constructive trust arises whenever a party has obtained money

which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty." SSI Medical Servs., Inc. v. Cox, 301 S.C. 493, 500, 392 S.E.2d 789 (1990). "Generally, fraud is an essential element giving rise to a constructive trust, although it need not be actual fraud." McNair v. Rainsford, 330 S.C. 332, 357, 499 S.E.2d 488 (Ct. App. 1998). Appellant does not allege fraud of any kind whatsoever, nor any other kind of wrongdoing as it regards the insurance proceeds. It's not in the Complaint, nor alleged at the hearing or in Appellant's brief. And while actual fraud may not be required, Appellant has also failed to allege mistake of fact, constructive fraud, breach of trust or violation of a fiduciary duty.

Further, Appellant acknowledges that the insurance proceeds belong to Respondent. It is Respondent's insurance policy, not Appellant's. There is no allegation that Appellant paid for or was a party to the insurance agreement between Respondent and State Farm. There is no allegation that paying the proceeds to Respondents would be by accident, mistake of fact, fraud or through a breach of trust or violation of a fiduciary duty. The insurance proceeds are to be paid to Respondent under Respondent's insurance policy.

Lastly, because Appellant has an adequate remedy at law vis a vie its separate, pending Mechanics' Lien and its Contract, it is not entitled to the equitable relief of a Constructive Trust. See Complaint, para. 12. Strategic Resources Co., et al., 367 S.C. at 545, 627 S.E.2d at 689. See also Scratch Golf Co. v. Dunes West Residential Golf Props., Inc., 361 S.C. 117, 603 S.E.2d 905 (2004).

V. THE TRIAL COURT CORRECTLY FOUND THAT APPELLANT'S MECHANIC'S LIEN DID NOT ATTACH TO THE INSURANCE PROCEEDS WHERE APPELLANT DID NOT ALLEGE ANY OWNERSHIP, RIGHT IN THE PROCEEDS OR AN INTENT WITH THE PARTIES TO DO SO

Although not pled it the Complaint, Appellant attempts to argue that because South Carolina Code Section 29-5-10(a) contains language that states that a mechanic has "a lien … upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure payment of the debt …", Appellant's Mechanic's Lien extends to all "interest[s] of the owner." See App. Brief p. 3 (emphasis added). The statute does not say that the lien is upon all interests of the owner. It is specific. The lien is against the building and the land where it is situated. Even if Appellant pled as such, nothing in the statute extends a mechanic's lien to fire insurance proceeds.

CONCLUSION

Because Appellant has an adequate remedy of law vis-a-vie his Mechanics' Lien action and Contract, and because Appellant did not allege facts sufficient to prevail in the relief sought, and because there are no relevant facts alleged in the Complaint that are in dispute, this Court should affirm the Lower Court.

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THE STATE OF SOUTH CAROLINA
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Appellate Case No.: 2019-000181

M.R. Jackson Construction, LLC, ...Appellant,

vs.

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Barbara J. Fields, ...Respondents,

PROOF OF SERVICE

I certify that I have served a copy of Respondent Barbara J. Fields Initial Brief and Barbara J. Fields Designation of Matter to be Included in the Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on September 27th, 2019 addressed to the following:

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September 27, 2019

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Re: *M.R. Jackson Construction, LLC v. State Farm Ins. and Barbara J. Fields*
Appellate Case No.: 2019-000181
Our File No.: 06557

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of Respondent Barbara J. Fields Initial Brief and Respondent Barbara J. Fields Designation of Matter to be Included in the Record on Appeal along with a Proof of Service. Please file the originals with the Court and return the copies in the self-addressed stamped envelope provided. Thank you for your assistance in this matter.

With best regards, I am

Best regards,

P. Brandt Shelbourne

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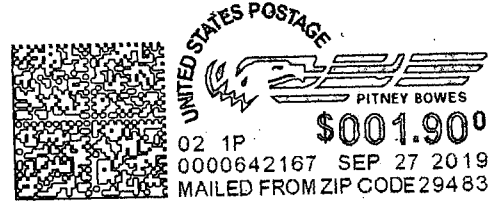

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