THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B Stilwell, Circuit Court Judge

Appellate Case No. 2019-001680

ABC's of Health, Inc., Appellant

v.

Next Gen Trading, LLC., Respondent

Appellant's Response to SCAC Letter dated October 17, 2019

Thank you for your letter dated 10-17-2019 explaining that a non-lawyer may not represent a corporate entity in the circuit court or appellate courts in South Carolina pursuant to *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999).

I have carefully researched that important decision by the Supreme Court of South Carolina and also its earlier decision in *State v. Wells* 191 S.C 468 (1939).

With all respect due an honorable court, I found that both of those decisions were clearly in direct conflict with The Constitution of the State of South Carolina and are therefore *null and void decisions* of the Supreme Court. They cannot stand as valid judicial decisions when properly challenged, as I intend to show in this responsive letter and report.

Please understand that I realize that the statement above sound preposterous, coming from a non-lawyer, without a Ph.D. law degree. However, this report will show that what I am communicating to this appellate court is an exceptionally important evaluation of relevant judicial issues affecting this appeal case.

You see, as a non-lawyer, I am not a subservient attorney/lawyer (or trial court judge) in this State who cannot afford to "tell the truth, the whole truth, and nothing but the truth" to the judges of this Appellate Court, or the justices of the Supreme Court of South Carolina.

That truth is reported herein in some detail, but the bottom line is that justices of the Supreme Court of South Carolina have made very serious mistakes in judicial judgment with their adjudication of the main issues in the two landmark cases cited above. Those critical judicial mistakes date back to the case law decision presented in *State v. Wells* 191 S.C 468 (1939). Those critical judicial mistakes were reaffirmed improperly and unconstitutionally in the referenced case of *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999).

A competent and responsible review of those two cases shows that both cases are "*null and void decisions*" because each case is in direct conflict with published "citizen safeguards" in The Constitution of the State of South Carolina. It is clear to appellant ABC's of Health, Inc. that the two landmark cases cited above cannot stand as valid controlling judgments of the Supreme Court of SC.

The fact that no attorney, no lawyer, and no judge has properly challenged the clear constitutional violations of the two referenced "judgments" indicates conclusively that the "legal profession" in South Carolina, and the South Carolina Bar Association, and the judicial court systems in South Carolina (at all levels) have acted repeatedly as self-serving elitist autocratic unfair, unethical, and corrupt despotic and tyrannical "judicial masters" of the people of this State.

The second portion of this report will specifically identify the constitutional safeguard provisions of The Constitution of the State of South Carolina that have been violated repeatedly by justices of the High Court. This report will show why the two referenced case law decisions, the two cases cited above, are clearly "*null and void*" judicial decisions due to their conflict with published safeguards in The Constitution of the State of South Carolina.

This direct conflict with very important citizens' protective safeguards published in The Constitution of the State of South Carolina has apparently never been exposed and challenged properly in any previous appeal cases before this Appellate Court or the State's High Court. The continuing practice of improperly denying capable and competent non-attorneys the right to present their own argument issues pro se in the circuit courts, and in this Appellate Court, has effectively enabled an extremely unfair, unethical, and corrupt judicial system in this State at all levels of judicial actions.

About 300 magistrate court judges and numerous circuit court judges are "footloose and fancy-free" to conduct litigation actions and render judicial decisions in a careless, incompetent, lazy, unfair, unethical, fraudulent, and corrupt manner, They can do that any time they choose to do so, and as often as they choose to do so, as this exceptionally important evaluation report will show.

Magistrate Court Litigation

When a litigant in a magistrate court case (summary court) needs to appeal that court's bench trial judgment or jury trial judgment, the litigant is immediately placed in an untenable appeal situation by decisions of the High Court of SC.

According to *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999), the appellant and the respondent are

both forced into an extremely impractical and unreasonably unfair appeal situation where they must hire an attorney/lawyer to represent them in the appeal process. The two landmark cases cited above show that those unfair situations have existed in South Carolina courts since 1939. (A period of about 80 years.)

Although the magistrate court's adjudication value limit is set at the low level of $7,500, an appellant and the respondent are now looking at circuit court (appellate court) litigation costs of $3,000 to $6,000 or more – maybe $8,000 or more, and they will have no practical control over those costs once they obligate themselves to pay for their appeal attorney fees. This is clearly a form of forced judicial system extortion (money from the unfortunate appeal litigants) that is required by the appeal parameters stated in *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999).

In such appeals, the appeal dispute value may be only several hundred dollars or less, but the appeal process will likely cost several thousand dollars for each appellant and for each respondent. Consequently, the appeal process is clearly impractical and unfeasible; it is no appeal process at all in most appeals coming out of the Magistrate Courts in South Carolina because it is clearly impractical for appellants and respondents to pay thousands of dollars to litigate dispute values that are likely much less than the costs involved with an appeal case.

It is also important to consider that the primary purpose of that appeal is to obtain a remand for a new trial – where the same types of incompetent, lazy, unfair, unethical, and perhaps corrupt Magistrate Court actions can occur again.

In some appeal situations, like this current appeal, the legal and judicial issues involved in the appeal may be much more important than the monetary issues. In the appeal case below, the circuit court judge, sitting as a single appellant court judge, was also "footloose and fancy-free" to conduct the appeal process in a

careless, lazy and incompetent manner, or conduct the appeal process in an extremely unfair, unethical, fraudulent, and corrupt manner – which he did.

In any of those potential situations, there is nothing feasible and practical that the severely abused litigant(s) can do about it. These potential judicial situations show that it is generally extremely foolish for the appellant and the respondent to proceed into the current day circuit court's appeal process.

You see, the circuit court judge can conveniently decide to "protect" any lazy, incompetent, unfair, unethical, fraudulent, and/or corrupt judicial actions that allegedly occurred in the Magistrate Court (or Summary Court) below. The circuit court judge can easily render an unfair, unethical, fraudulent, and outrageously corrupt appeal decision for the appellant's circuit court appeal case.

In that predictable situation, the circuit court judge knows there is nothing feasible, practicable, or sensible that a grossly abused appellant can do at that point in time about any unfair, unethical, fraudulent, and/or outrageously corrupt judicial "appellate court" decision that is rendered for said appeal case.

Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999) makes all of these unfair, unethical, and corrupt judicial actions possible, and highly likely for pro se litigants in the Magistrate Court proceeding. You see, there is an automatic intense disrespect by elitist self-serving autocratic unfair and unethical despotic and tyrannical judicial officers for any litigant who has the audacity to choose (usually by necessity) to proceed pro se in the Magistrate Court, or in any court in this State.

The only defensive action available at that point for the appellant would be to hire an attorney (perhaps the same attorney) to represent him/her on appeal to this Appellate Court. Consequently, the same attorney had a built-in financial incentive to get paid for losing the appeal case in the circuit court so the attorney

might also get paid to represent the abused appellant in the next Appellate Court. Is it realistic to believe that the appeal process may work in that fashion? YES!!!

If the abused appellate foolishly wants to proceed to this Appellate Court, he/she will likely be looking at another $3,000 to $8,000 or more in appeal attorney fee expenses. The appellant also needs to carefully consider that this Appellate Court's three-judge panel can also easily decide the appeal in an unfair, unethical, fraudulent, and corrupt manner.

The Appellate Court judges can also knowingly and willfully "protect" any careless, lazy, incompetent, unfair, unethical, fraudulent, or corrupt judicial actions of the circuit court's "appellate judge" below. That Appellate Court decision will simultaneously "protect" any lazy, incompetent, unfair, unethical, fraudulent, or corrupt judicial actions that may have occurred in the Magistrate Court below.

You see, *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999) improperly and unfairly makes all kinds of incompetent, careless, lazy, or unfair, unethical, fraudulent and/or corrupt self-serving judicial situations quite possible in the Magistrate Courts or the Circuit Courts throughout this State.

The cited *Renaissance* case makes such improper and unfair judicial actions highly likely events for any judge that decides to easily take advantage of the "footloose and fancy-free" opportunity that the *Renaissance* case presents to any Magistrate Court judge, or circuit court judge, or even judges in this Appellate Court.

Consequently, the judicial systems in South Carolina can be disgustingly unfair, unethical, fraudulent, and outrageously corrupt in an elitist autocratic

despotic and tyrannical "self-serving manner" any time they choose to be that way because of *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*

The justices of this State's Supreme Court have safely isolated themselves from a valid accurate and responsible report about these types of improper and unfair judicial actions because by judicial fiat they have forced all appellant litigants to communicate with any appellate courts through attorneys, lawyers, and judges who are subservient members of the legal profession in South Carolina. Those subservient members of the legal profession in this State know they cannot report the whole truth about such events to the circuit court's (appellate court) judges without potentially having to cope with very serious repercussions - that might include disbarment from the legal profession. See Exhibit One presented herein.

In the circuit court appeal case herein, it is highly unlikely that any attorney that would be hired to represent the appellant on appeal to the circuit court would honestly and courageously report accurately all of the careless, incompetent, or unfair, unethical, fraudulent, and/or corrupt judicial actions that occurred in the Magistrate Court (Summary Court) actions that caused this appeal case..

If the appellant's hired appeal attorney honestly and courageously reported those issues competently in the appellant's appeal Memorandum of Law, it is very likely that the subservient self-serving judicial actions of the circuit court judge (appellate judge) would easily find some way to effectively "punish" severely the appellant's appeal attorney for having been honest and courageous with a fully accurate Memorandum of Law report about the issues on appeal.

A similar situation would then likely occur on appeal to this Appellate Court if the appellant's attorney was also fully honest and courageous in reporting the careless, incompetent, lazy, or unfair, unethical, fraudulent, and/or corrupt judicial actions of the Magistrate Court case and the attorney also reported

honestly and courageously all unfair, unethical, and corrupt judicial actions in the circuit court appeal case, where a single judge was the appellate judge below.

Relevant Experiences in the Florida Courts

Although I have lived in Mauldin, SC for many years, I have had a lot of pro se litigation experiences in the courts of Florida. I found that the unfair, unethical, and corrupt judicial trial court actions described briefly above were predictable events that were likely to occur in almost every trial court litigation process.

My experiences with ten appeal cases, that I filed and prosecuted pro se, also found that a three-judge panel of Appellate Court judges could also be extremely unfair, unethical, and corrupt in an elitist self-serving autocratic despotic and tyrannical manner. Those types of judicial actions occurred for most of my appeal cases, but not all of them, as will be shown below.

I will relate some of those unfair, unethical, and outrageously corrupt judicial events below because they are relevant to this report in very important ways. This report about some of my Florida judicial experiences will show why the relevant judicial decision rendered in *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.* is an extremely bad way to operate a judicial system.

Over a period of 20+ years of ongoing related litigation actions that were conducted against me in Florida, involving more than 17,000 hours of my life, I was ruthlessly harassed in a malicious manner numerous times by two county court judges (jurisdiction to adjudicate cases up to $25,000 in alleged damages), and also five successive circuit court judges that got involved in the litigation.

This was a complex series of related litigation actions where I was betrayed by my defense attorney in the initial civil litigation equity court trial (one-day bench

trial – about seven hours) on 9/8/1989 where I was a defendant co-trustee of my deceased father's inter vivos trust agreement estate.

There was no legitimate basis for the equity court trial, but it created an opportunity for two local "opposing" attorneys to make many thousands of dollars litigating a concocted family dispute about monthly income distributions to three family member beneficiaries of my deceased father's trust estate.

The plaintiff wanted me removed as a co-trustee because I would not agree to her unreasonable demands for more monthly income from the family trust estate. I was familiar with her financial situation: her nice home was paid for, her 98 Oldsmobile (like new automobile) was paid for, she had no unusual expenses, and she had more than $200,000 dollars in her bank accounts. Yet she wanted more monthly trust income distribution than was her fair share of income.

As the defendant co-trustee, I knew that I had not done anything wrong and the case should have been easy to win by the prominent local attorney that I hired to represent me in the equity court trial in Palatka, Florida (the county seat).

During the bench trial on 9/8/1989, the plaintiff's attorney introduced five surprise "ambush" complaint issues against me that involved complex trust estate management and federal estate taxation issues. My defense attorney objected to the introduction of those surprise complaint issues during the trial, as they were being introduced sequentially as the bench trial progressed.

My defense attorney objected four separate times during the trial to surprise complaints being introduced. The circuit court judge immediately overruled his objection each time, and the circuit court judge required me to present defensive argument about each of the five surprise complaint issues.

Fortunately, I was a very competent and knowledgeable co-trustee, and I was able to present competent defensive argument about each surprise complaint, although I had not had any chance to prepare for such defensive argument.

The surprise complaints "ambush" issues were about complex technical matters that I had not responsibly considered during the previous forty months. It is important to understand that I was not an estate planning attorney. I was just a very responsible non-attorney co-trustee of my father's trust agreement estate.

I had carefully studied the trust estate management issues in substantial detail. Consequentially, I was a very competent co-trustee who knew what I was supposed to do in a reasonable and fair-minded manner with the three primary beneficiaries of dad's trust agreement estate.

When the Final Judgment was rendered several weeks later, the judge ruled in my favor on the original complaint issues, but he ruled against me on three of the five surprise "ambush" complaint issues. He removed me and my younger brother as the two co-trustees of my deceased father's trust agreement estate (valued at more than five hundred thousand dollars).

My brother and I were selected to be co-trustees by both parents, and it was clear to them that I would be a knowledgeable and responsible trustee. My younger brother was added as a co-trustee simply because my mother did not want him to feel left out of these very important family financial matters.

My brother (an incompetent co-trustee) and I were in our early 60's age-wise when we were removed as co-trustees and replaced by a local "certified public accountant" (CPA) who had participated in the trial as a witness for the plaintiff.

The trial was a farce and a fraud proceeding, where the circuit court judge was also a local probate court judge. As the trial progressed, I realized that the judge

apparently knew nothing about complex estate planning for a married couple using mirror image inter vivos trust agreements for each spouse.

During the trial, it also became rather clear to me that the two opposing attorneys involved in the trial knew essentially nothing about such complex estate management using those two trust agreements (one for each spouse).

The testimony of the CPA showed that he also did not understand the trust agreements and their complex functions in the family trust estate. Most CPA's have no education, training, or experience with such complex estate planning. I was knowledgeable about those issues because I had studied them carefully.

I appealed the circuit court Final Judgment and hired another attorney for the appeal in Daytona Beach, Florida, where the Fifth District Court of Appeal was located. (About 60 miles from Palatka, Florida, where the trial was conducted.)

My appeal attorney betrayed my litigation issues in the appeal by willfully "cooperating" with the defendant's attorney to cause me to lose the appeal (same sneaky and conniving dishonest attorney that had represented the plaintiff below). The appellate court's three-judge panel affirmed Per Curiam the trial court's Final Judgment, but they did not present a written opinion for the case. Exhibit Two is the recorded information for that unfair and corrupt appeal case.

I eventually learned that my defense attorney's four objections during the trial to the introduction of surprise complaint issues had been weak objections ("for show effect") that did not clearly preserve those issues for appellate review.

I also learned about a long-standing landmark appeal decision by the Supreme Court of Florida that had strictly prohibited the introduction of surprise "ambush" complaint issues during trial - unless the parties specifically agreed to amend the pleadings to allow the introduction of those surprise complaint issues.

It is very important for this argument issue to show that the two opposing trial attorneys during the equity court trial on 9/8/1989 had ignored that long-standing relevant controlling landmark decision (strictly prohibiting surprise "ambush" complaint issues during a trial). The circuit court's trial court judge also ignored that relevant controlling decision during trial and in the Final Judgment.

On appeal, both opposing attorneys totally ignored that relevant controlling Florida Supreme Court decision. The panel of three Appellate Court judges also ignored that relevant landmark decision. Unfair and unethical litigation actions were used by each attorney and by each judge throughout the litigation process.

I had subsequently refused to pay my deceitful and fraudulent defense attorney the additional $3280 that he had demanded after the corrupt trial had occurred on 9/8/1989. He then sued me for that amount of money.

I timely counter-claimed for several hundred thousand dollars in damages for deceit, fraud, and legal malpractice due to the tremendous damages that his unfair, unethical, and corrupt litigation actions had caused to me with all of my relatives. (The unfair and unethical Final Judgment was worded to indicate that I had been an incompetent co-trustee of my deceased father's trust estate.)

The litigation process became a very complex nightmare for me because I lived in Mauldin, South Carolina, and the defense attorney's law firm office was across the street from the local county courthouse in Palatka, Florida. As stated earlier, seven judges eventually became involved in the litigation actions over a period of 20+ years of ongoing related litigation. (Two county court judges and five circuit court judges successively got involved in the litigation actions.)

I found that all seven of those judges were as unfair, unethical, fraudulent, and corrupt as they could be. They took any unfair, unethical, and corrupt judicial

actions possible to prevent me from being able to prosecute my case pro se against a prominent attorney (with 20+ years of litigation experiences) – the attorney that had represented me in an extremely unfair and fraudulent manner in an equity court family dispute in 1989 about trust administration monthly income distributions to the three primary beneficiaries of the trust estate value. My initial counterclaim action demanded a jury trial, but I was denied a jury trial several times during the first three years of litigation. My counterclaim was improperly dismissed eventually due to an alleged discovery violation.

The deceitful and extremely corrupt attorney that represented me initially in 1989 had collusively acted conspiratorially with the opposing (plaintiff's) attorney to cause me to lose the trust administration dispute case that should have been easy for my defense attorney to win. The two local attorneys knew each other well, having been employed by the same local Palatka law firm in past years.

They collusively took those unfair, unethical, and corrupt surprise "ambush" complaints trial court tactics to defeat me at trial, knowing that the plaintiff had no legitimate complaint against me. Discovery actions had shown that I was a competent and responsible co-trustee.

The two "opposing" attorneys and the extremely unfair, dishonest, and corrupt circuit court judge used the one-day equity court bench trial to ruthlessly and maliciously punish me severely- apparently because I had helped my aging parents develop an excellent trust agreement estate management plan.

That plan legally and properly minimized federal estate taxes down to zero for an estate value that would have been potentially subjected to federal estate taxes at that time of about $225,000 (if both parents had died in that time period).

The trust agreement estate management plan that I personally helped develop also minimized potential probate process administration complications, and it also minimized potential probate attorney fees down to near zero.

When my father died on November 22, 1986, the subsequent probate court processing for his probate-able estate value was completed within 24 hours after initiating the probate process. Practically all of his estate asset value had been transferred into his inter vivos trust estate and those assets, therefore, avoided being in dad's probate-able estate value. Consequently, the probate process was completed within 24 hours with "no probate administration."

That probate situation was apparently why the two local "opposing" Florida attorneys collusively "cooperated" with each other to unfairly and unethically defeat me as a co-trustee during the one-day equity court trial. That probate situation is likely why the local circuit court judge effectively "cooperated" with the unfair, unethical, and disgustingly corrupt trial court schemes and tactics of ruthlessly ambushing me in a malicious manner during the one-day bench trial.

The appellant's attorney introduced five ambush complaint issues during trial. He obviously realized that he had no legitimate winnable complaint issues in the plaintiff's pleadings that he had filed in the case. The five surprise "ambush" complaint issues had not been raised before the trial was in progress, so there was no discovery actions about those five "surprise" complaint issues.

My defense attorney objected four times during the trial to those surprise complaint issues being heard by the circuit court judge. The judge overruled each objection. In the subsequent Final Judgment rendered, the judge ruled in my favor on the pleaded complaint issues, but he ruled against me on three of the five surprise complaint issues.

The judge obviously knew nothing about complex trust administration, but he used three of the surprise complaint issues to present a Final Judgment that was outrageously unfair, unethical, fraudulent, and disgustingly corrupt.

I then hired another attorney in Daytona Beach, Florida – where the appellate court was located (60 miles away from the town where the equity court trial had been conducted). Daytona Beach, Florida is where Florida's Fifth District Court of Appeal is located.

My appeal attorney subsequently betrayed my trust by knowingly and willfully "cooperating" collusively with the defendant's appeal attorney. This was the same unfair, unethical, sneaky, conniving and corrupt attorney that had represented the plaintiff in the trial court below. That unethical collusive and conspiratorial attorney "cooperation" caused me to lose the appeal that should have been won for the reasons reported below.

I eventually learned that the four objections raised by my defense attorney during the equity court trial (to five surprise "ambush" complaint issues) were weak objections (raised for Perry Mason type courtroom "pretense show").

I subsequently learned that none of those four objections had adequately preserved objection issues for appeal. Those "weak objections" were raised during trial by a very intelligent and experienced trial attorney with more than 20 years of litigation experiences in Florida courts.

During the litigation that followed, where I sued that attorney for deceit, fraud, and legal malpractice, the attorney collusively and conspiratorially litigated with the "cooperation" of a series of local judges to defeat me in my non-resident pro se litigation actions against that attorney. (Deceit, fraud, and legal malpractice.)

Over a long number of years of related litigation actions, a successive series of seven local judges collusively and conspiratorially "cooperated" with any unfair and unethical litigation scheme and/or tactic that the local attorney could concoct and perpetrate against me. The successive series of trial court judges also became my litigation opponents, as they "cooperated in numerous ways" to help the local counterclaim defendant attorney.

Over a period of 20+ years of ongoing related litigation actions, those judges got away with all of their unfair, unethical, fraudulent, and corrupt judicial schemes and tactics because the appellate court judges in ten appeal cases (that I prosecuted pro se) were usually just as unfair and unethical as the trial court judges below. However, I did win two of those ten appeal cases that I filed and prosecuted pro se. Those appeal decisions are relevant to this report.

Exhibit Three herein is a true copy of the first appeal that I filed and prosecuted pro se in the Fifth District Court of Appeal.

The second appeal case that I won was an appeal of a county court judgment to the local circuit court as an appellate court. Consequently, that was not a published appeal case opinion, as Exhibit Three was.

The second appeal that I wone was even more important than the appeal case shown in Exhibit Three. I had appealed a county court judgment for Criminal Contempt of Court, where the local attorney that I had sued, and was still litigating with, had worked collusively with the county court judge and the local state prosecutor to try to put me in the local county jail for a period of nine months (terminate my pro se defensive litigation actions against said attorney).

I won that very important appeal case proceeding pro se against the local prosecutor because my appeal showed that the county court judge did not have subject-matter jurisdiction of the "alleged criminal contempt of court issue" that

was alleged against me (falsely). The county court judge had tried to prosecute me for an "alleged" violation of a previous circuit court's injunctive order when in fact there had not been any violations of that circuit court's injunctive order.

That extremely unfair, unethical, and outrageously corrupt injunctive order (December 1994) had maliciously and ruthlessly stopped me from proceeding pro se in the circuit court litigation - where I was still proceeding pro se against my former defense attorney in my counter-claim action alleging deceit, fraud, and legal malpractice in the equity court litigation trial on 9/8/1989.

My appeal case showed that there had not been any violations of the circuit court's injunctive order, but the appeal brief also showed that the county court judge did not have subject-matter jurisdiction to try to enforce "alleged violations" of the circuit court's injunctive order.

The circuit court judge, sitting as an appellate court judge, ruled in my favor (ruled against the state prosecutor presenting the State's defendant argument issues). It was clear that a circuit court has jurisdiction to enforce its own injunctive order, and the county court cannot do that for a circuit court.

The circuit court had not filed any complaint against me about an alleged violation of that injunctive order, and to this day (from 12/1994), there has never been a circuit court complaint about a violation of that injunctive order.

Relevance of these Florida Court Cases to This Appeal

These Florida court cases show that it can be incredibly important for a litigant to be allowed to present his own appeal arguments pro se.

I won two very important appeals proceeding pro se – in situations where it would have been most unlikely that I could have won either of those appeal cases

by hiring a local attorney to represent me on appeal of those two unfair, unethical, fraudulent, and outrageously corrupt "judicial" judgments. Fortunately for me, Florida's appeal processes are not as unfair and unethical as South Carolina's appeal processes – regarding pro se appeal actions.

Furthermore, the attorney fee costs involved with each of those appeals would have denied me any opportunity to appeal each of the judgments rendered against me. I had no access to my trust account funds – blocked by the court.

I have shown herein that if Florida's appeal processes had been as unfair and as unreasonable as South Carolina's appeal processes, it would have been impossible for me to win either of those very important appeal cases.

My life would have been affected in a drastic and grossly improper and unethical and unfair manner if I had been put in the Putnam County Jail for nine months. I could not have continued litigating pro se for those nine months, and it would have destroyed my self-employed business operation in Greenville, SC.

The ongoing litigation process in Florida from late 1989 to 1995, when the contempt of court appeal was taking place, did great damage to our self-employed business in Greenville, SC.

The malicious and ruthless litigation actions of the attorney that betrayed me during the equity court trial on 9/8/1989 caused a tremendous amount of stress for me and my wife for many years. That attorney died three days before Christmas in 2001. He had two adult sons who were also Florida attorneys, and they continued the ruthless and malicious harassment litigation until year 2010 when I finally realized that the Florida judicial system was hopelessly corrupt.

I refused to litigate anymore after the two adult sons of the deceased attorney confiscated $126,000+ out of a trust fund bank account that my deceased father

had arranged for me in his trust agreement (upon his death), The CPA successor trustee could not allow me access to those funds due to a court order – pending the outcome of the ongoing litigation with the law firm that the now-deceased attorney had owned as an LLC.

The litigation in Florida from March 1989 into year 2010 cost me about $40,000 in cash for litigation expenses in the Florida courts and the Florida appellate courts (ten appeal cases – all pro se except appeal # 1).

In addition to that $40,000, and the $126,000 from my trust fund (depleting those funds), the litigation process for 20+ years damaged our self-employed health and wellness store business tremendously, probably costing my wife and I another $300,000 in lost business income.

Consequently, our costs for my diligent and responsible efforts to expose the extremely unfair and unethical judicial schemes and tactics used against me in the Florida courts in 1989 – 1990 has cost us about $466,000. It also wrecked our local self-employed business over a 20+ years period of time. It also wrecked our family life throughout those 20+ years, and caused enough serious stress to kill most people. However, my very important healthcare knowledge helped us a lot.

I also prosecuted pro se one case in the respective Federal District Court, then into the Eleventh Circuit Court of Appeals (Atlanta, Ga), and then into the U.S. Supreme Court with a Petition for Writ of Certiorari.

That was my second Petition for Writ of Certiorari to the U.S. Supreme Court. The first such petition came from my first appeal (Exhibit Two herein) where my appeal attorney in Daytona Beach, Florida betrayed my trust in him by "cooperating" with the defendant's unfair and unethical appeal attorney to cause me to lose that appeal case (the surprise "ambush" complaints appeal).

When this appellate court reviews Exhibit Three herein, realize that I won that appeal proceeding pro se in a Summary Judgment proceeding in the Circuit Court. Exhibit Three shows three appellate court case law decisions that established controlling legal standards proving that the statute of limitations had not run when I filed my counterclaim against the attorney for legal malpractice.

It is very important to understand that the transcript of that motion hearing proved conclusively that I personally presented the circuit court judge with photocopies of three controlling appellate court cases that proved that the statute of limitations had not run when I filed my counterclaim against the corrupt attorney. The purpose of that Summary Judgment hearing was allegedly to prove that the statute of limitations had run when I filed my counterclaim pleading.

I knew when I left that hearing and traveled back to my home in Mauldin, SC that I had competently and responsibly defeated that Summary Judgment objective. However, when I subsequently received the circuit court order about that motion hearing, the circuit court judge knowingly and willfully falsified that Summary Judgment judicial decision. His order claimed that the statute of limitations had run when I filed my counterclaim for legal malpractice against the local law firm, and it dismissed my counterclaim as being filed untimely.

It is important to also understand that in Florida, the winning attorney provides a draft order for the judge to sign regarding the outcome of a litigation action. In this situation, attorney Alan Fields, Jr. and the circuit court judge knew they were filing an extremely unfair, unethical, and fraudulent Summary Judgment Order.

Florida has criminal law statutes for prosecution of attorneys and/or judges that file fraudulent orders. In addition, the attorney and judge perpetrated mail fraud when that fraudulent order was placed in the U.S. Mail system to me.

The three-judge Appellate Court Panel knew all of this of course, but they took no actions to initiate a criminal investigation of those criminal actions by the circuit court judge (a former state prosecutor) and the defendant attorney's law firm. This is another illustration of the extreme level of judicial corruption that is commonplace judicial actions in the Florida courts.

Although I won the appeal case shown in Exhibit Three, I never got reimbursed for any of the substantial expenses that I had incurred due to defending myself against an unfair and unethical and fraudulent Summary Judgement hearing.

It is very important to understand that I personally scheduled the transcription of that Summary Judgment hearing (about three hours time), and I purchased the transcript for that hearing, and it became a part of the Record on Appeal which I also paid for. That preparation by the Clerk of Court's office staff clerks cost several hundred dollars, and I also had to pay for the appeal filing fees (in the Circuit Court and in the Appellate Court – several hundred dollars total). In addition, I spent many hours preparing for that Summary Judgment hearing and had about 18 hours of automobile travel time round trip to participate in the Summary Judgment hearing that was 450 miles away in Palatka, Florida.

With those multiple Florida unfair, unethical, and corrupt judicial actions as background information, It is important to understand that the Simpsonville SC Magistrate Court's one day jury trial on February 15, 2019, was conducted in an extremely unfair and fraudulent manner by a female Summary Court judge who was a law school graduate and a member of the SC Bar for nine years

She perpetrated a heinous extrinsic fraud upon the Magistrate Court by knowingly and willfully "cooperating with" and "enabling" the extremely unfair, unethical, fraudulent, and corrupt defendant (Next Gen Trading, LLC) to present a lot of extremely unfair and unethical perjured defensive testimony during the one-day trial. (Testimony about surprise "ambush" defensive argument issues that

had not been noticed in their defensive pleading. They presented no objections of any kind to the 28-pages detailed Complaint that the plaintiff filed in the case.

The trial court judge took no judicial actions at all during the trial to prevent the defendant's witnesses (four) from presenting surprise "ambush" testimony about numerous issues that had not been noticed in their Answer pleading.

Consequently, the plaintiff, ABC's of Health, Inc. was denied any discovery actions for those multiple defensive argument issues because those issues had not been noticed as defensive issues prior to trial. The plaintiff was also ruthlessly denied a fair opportunity to prepare responsible arguments in opposition to the defendant's numerous surprise "ambush" affirmative defenses. The judge allowed and enabled the defendant's witnesses to corrupt the trial in numerous ways with surprise "ambush" testimony that was mostly perjured testimony.

The plaintiff did the best that he could under those very unfair and unethical judicial circumstances. The six-person jury ruled in the plaintiff favor to some extent, but the trial was a heinous farce and fraud proceeding due to several unfair and unethical "judicial actions" and "defendant actions" during the one-day trial.

The jury award for the plaintiff came up about $600 short; they obviously failed to read through the plaintiff's 28-pages Complaint and the plaintiff's 17-pages Answer to Counterclaim (which had been given to each juror during trial as a major part of the best evidence available for them to consider for the trial).

As president of the plaintiff corporation, I timely filed a series of progressive motions that moved the Summary Court judge for a new trial. Judge Laura Saunders summarily denied each of my reasonable and responsible motions.

The plaintiff corporation was left with no viable litigation action except to appeal the Final Judgment rendered for the Magistrate Court case.

When I appealed the Magistrate Court's Final Judgment to the circuit court, as the president of ABC's of Health, Inc., the circuit court judge, sitting as a single appellate court judge, conducted the appeal in an extremely unfair, unethical, fraudulent, and outrageously corrupt manner.

The judge's appeal decision clearly attempted to "cover-up" and defensively "protect" the unfair, unethical, and outrageously corrupt Summary Court judge's judicial actions. Those actions that were exposed and reported with clarity in the Amended Memorandum of Law that I filed pro se for the appellant Corporation.

The judge's appeal decision was extremely unfair, unethical, and outrageously corrupt. He lied about all issues stated in his appeal decision. He refused to acknowledge any of the unfair, unethical, fraudulent, and corrupt judicial actions that were reported responsibly on appeal in the appellant's detailed Amended Memorandum of Law and proven with clear and convincing evidence in the digital Record on Appeal.

There was an abundance of competent evidence before the circuit court judge (appellate court) to prove convincingly that the argument issues presented in the appellant's Amended Memorandum of Law had a very strong responsible evidential basis that justified the circuit court to remand the case for a new trial.

The respondent in the appeal did not present any defensive appeal argument pleadings. Consequently, the only evidence before the appellate court judge was evidence that strongly supported the appellant's argument issues on appeal, clearly showing a strong basis to remand the case for a new trial.

The circuit court judge ignored the requirements of *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999). That was apparently done because he recognized that the appellant's pro se prepared Amended Memorandum of Law was presented in full compliance with the applicable rules of Appellate Court Procedure.

However, the deceitful, unfair, unethical, fraudulent and corrupt appellate court judge found no fault anywhere in the Magistrate Court actions reported and exposed by the appellant, ABC's of Health, Inc. I personally spent more than 300 hours of work preparing a lengthy affidavit of evidence, a Memorandum of Law and then an Amended Memorandum of Law and filing and serving those documents upon respective parties involved with that circuit court appeal case.

The appeal decision that was rendered by the circuit court judge was as unfair, unethical, fraudulent, and corrupt as it could possibly be.

This report shows very clearly why it is absolutely essential that appellants (Corporate or otherwise) be allowed to present their argument issues pro se to this Appellate Court any time that this is necessary – for the following objectives:

1. minimizing the costs involved and making an appeal a feasible action or
2. to ensure that the facts will be reported accurately to this appellate court.

The circuit court judge (appellate judge) was confident that appellant ABC's of Health, Inc. would not be able to reasonably appeal his appeal decision to this Appellate Court due to the unfair and unreasonable appeal restrictions stated in *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999). The cost of such an appeal would be too expensive for an appeal involving only about $600 of additional jury award for the appellate if a new trial was obtained and then prosecuted successfully.

Consequently, the circuit court judge below knew that he would be able to get away with rendering an outrageously unfair, unethical, fraudulent, and corrupt appeal decision. He clearly intended to unfairly, unethically, and corruptly "protect" the unfair, unethical, fraudulent, and corrupt judicial actions that occurred in the farce and fraudulent jury trial conducted in the Magistrate Court below.

That extremely corrupted appeal decision clearly illustrates the pervasive "self-serving" protective judicial actions that can very easily occur in the corrupt despotic and tyrannical judicial systems that are routinely allowed in South Carolina courts, and especially decisions for appeals that came from the Magistrate Courts – due mainly to the effects of the cited *Renaissance* case.

The appeal actions reported herein clearly illustrate the predictable unfair and unethical appeal court decision that is likely to occur due to the self-serving nature of judicial actions where one judge acts to "protect" the unfair, unethical, fraudulent and corrupt judicial actions that occurred in the court below.

Currently, a severely abused and damaged appellant is prohibited from reporting pro se such judicial actions to this Appellate Court due to the unfair and unreasonable and clearly unconstitutional decision rendered by *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999).

The cited *Renaissance case* improperly prohibits a severely abused Magistrate Court litigant from reporting on appeal to the circuit court (the appellate court) what actually happened in the Magistrate Court litigation below.

The *Renaissance case* also improperly prohibits a circuit court appellant from reporting pro se to this Appellate Court any unfair, unethical, fraudulent and corrupt judicial actions that occurred in the circuit court appeal case below.

Consequently, we can anticipate that we will have a lot of unfair, unethical, fraudulent, and corrupt litigation actions occur in the 300+ magistrate courts in South Carolina and also occur in numerous circuit courts throughout this state.

The controlling case of *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999) practically guarantees that those unfair and unethical judicial actions will likely occur in numerous judicial situations. The *Renaissance* case makes it very easy for Magistrate Court judges and Circuit Court judges to be careless, lazy, incompetent, unfair, unethical, and disgustingly corrupt in their adjudications of many types of situations.

Null and Void Supreme Court Decision

The argument issues presented up to this point have shown why it is very unfair and very bad judicial policy to deny competent and responsible pro se litigants to present their own cases in the circuit courts and this appellate court.

Let's now consider why the controlling case of *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999) is in direct conflict with citizens' protective sections of The Constitution of South Carolina. If that situation is true, as the appellant herein contends, that case is an unconstitutional decision, causing the case to be *a null and void decision* that cannot be used to prevent this corporate pro se filed appeal case from being heard in this Appellate Court.

One very important constitutional safeguard issue to evaluate is found in:

Art. I, at § 14. Trial by jury, witnesses, defense – "and to be heard in his defense, by himself, by his counsel, or by both."

The Supreme Court of South Carolina has no subject-matter jurisdiction to attempt to rewrite this protective portion of The South Carolina Constitution by judicial fiat - using a case law decision.

The restrictive actions in the cited case above, that deny litigants (persons) pro se access to litigate in the circuit courts, and in this appellate court, and in the Supreme Court of South Carolinas are clearly in direct conflict with Art. I, § 14, causing the respective restrictive decision stated in case *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999) to be *null and void.*

In this regard, there is no point in the justices of the high court trying to argue that the safeguards in Art. I, § 14 do not apply to Corporations or Corporate litigants. The Constitution specifically assigns authority and duty to the General Assembly in Article IX at § 2 to regulate all Corporations within this state.

The General Assembly has defined Corporations to be persons in the courts of this state. That action complies responsibly with the judicial ruling of the U.S. Supreme Court in Metropolitan Life Insurance Company, et al., v. W.G. Ward, Jr. et al., 105 S.Ct. 1676 (1995) - where the high court clearly stated that Corporations were to be treated as persons in the courts within the USA.

In the referenced case, *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, the court considered S.C.Code § 40-5-320 (A)(1) (Supp. 1998) which provides: (A) It is unlawful for a corporation or voluntary association to (1)

practice or appear as an attorney at law for a person other than itself in a court in this State or before a judicial body ..."

It is very important to understand that this relevant statutory provision fully complies with Art. I, § 14 because Corporations are to be treated as persons in the courts of this State, and in that respect, Corporations are enabled to litigate for themselves pro se, as any other person in the courts of South Carolina.

However the court's argument in the referenced case regarding the statute cited above states that "The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants and cites *Williams v. Bordon's Inc.* 274 S.C 275, 262 S.E. 2d 881 (1980).

The court then presents a specious argument that indicated that the cited statute above (that specifically authorizes a Corporation to appear in the courts of this State *representing itself* had violated the separation of powers doctrine. (Stated in Art. 1, § 8) The court goes on to state that "the Constitution commits to this Court the duty to regulate the practice of law in South Carolina."

The General Assembly has not interfered with the Court's regulation of the practice of law in this State. The General Assembly has simply taken actions to show that all citizens of this State are not required to be members of the legal profession just because they have a responsible and legitimate need to conduct litigation pro se in the courts of this State.

It is clear to the appellant in this appeal case that the Supreme Court Justices have attempted to subject all litigants to the same standards that apply to members of the legal profession in this State. That is clearly wrong and it attempts to establish an unfair and unethical monopoly of the courts in this State.

See Art. I, § 3, Privileges and immunities, due process, and equal protection of laws. Also, see Art. I, § 1. Political power in people. If necessary, we (the people) will revise The Constitution of South Carolina to totally eliminate the potential for unfair, unethical, elitist self-serving autocratic despotic and tyrannical judicial actions in this State.

The appellant herein, ABC's of Health, Inc., finds very serious fault with the argument issues presented in the referenced case in the following respects.

1. **The Court has again totally ignored the fact that the relevant restrictions established in *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.* are clearly in conflict with Art. I, § 14. In that respect, the case is *a null and void case law decision.***
2. **The Court's argument claims to be safeguarding the rights of litigants. This is clearly a specious argument because the court's actions, to prevent pro se litigants, and also Corporate litigants, the very important right to present their own appeal arguments does not safeguard the rights of litigants at all, but it does safeguard and protect the unfair, unethical, and corrupt monopoly that attorneys and lawyers now have in this State due to the unconstitutional statement presented in the cited *Renaissance* case.**
3. **The court considered S.C.Code § 40-5-320 (A)(1) (Supp. 1998) and decided that it violated the separations of powers doctrine. That is also a specious argument because the Constitution specifically authorizes and assigns such duties and responsibilities to the General Assembly. They did their duty in that respect in compliance with Art. I, § 14 and the relevant ruling of the U.S. Supreme Court.**
4. **The separation of powers doctrine was violated but it was violated by the Supreme Court's willful interference with the duties and responsibilities of the General Assembly, as authorized in Art. IX, §2. It is clear that there are duties on both sides of this subject but the Supreme Court has clearly tried to dominate this subject by claiming falsely that they did so to protect the**

rights of litigants. As shown herein, they improperly restricted and totally denied the constitutionally protected rights of litigants (persons) in all circuit courts and all appellate court in South Carolina.

5. **The justices failed to read correctly Article 5 of the State Constitution. It specifically states that the Supreme Court is subject to the relevant statutory laws provided by the General Assembly. How could all of the learned justices overlook that very important requirement for 80 years?**
6. **See especially § 40-5-80. Citizens may prosecute or defend own cause.**
7. **It is clear to the appellant herein that such unfair, unethical, and corrupt self-serving despotic and tyrannical monopolistic judicial actions provide a solid responsible basis for the SC House of Representatives to initiate impeachment proceeding for the five Justices of the Supreme Court and also initiate impeachment proceedings for all Appellate Court judges.**
8. **It is clear to the appellant herein that those judges have all been a knowing and willful party to the extremely unfair, unethical, and corrupt self-serving autocratic despotic and tyrannical judicial fiat fraud that is exposed herein – a heinous fraud upon the naive and trusting non-attorney people (persons) of South Carolina for many years. This heinous self-serving judicial fraud dates back 80+ years. See *State v. Wells* 191 S.C 468 (1939).**

I have shown herein that the appellant herein, ABC's of Health, Inc., has a constitutionally protected and a statutorily protected right to present this appeal pro se to this Appellate Court. It appears that it will be necessary for this court to certify the questions presented herein for consideration by the Supreme Court Justices of South Carolina. So be it.

Sincerely,

L. E. Willoughby, Jr.

Lonnie E. Willoughby, Jr., president of ABC's of Health, Inc.

I certify that I served a true copy of this letter/report upon **Respondent** herein by depositing a copy of it in the United States Mail, postage prepaid, on **November 18, 2019 (Monday), addressed to Chris Johnson, Next Gen Trading, LLC. at 437 N. Main St., Mauldin, SC 29662**

November 18, 2019

L.E. Willoughby, Jr.

Lonnie E. Willoughby, Jr.
President of ABC's of Health, Inc.
Post Office Box 127
Mauldin, South Carolina 29662-0127
Voice: (864) 329-0004
Pro se representative for Appellant

10-16-2015 U.S. Sup. Ct. Actions 19

United States Supreme Court Actions
October 16, 2015

OTHER ACTIONS:

Attorney's Claim That His Speech Exposing Alleged Judicial Corruption Prompted His Disbarment

In response to a disbarred California attorney's certiorari petition mounting a free speech challenge to his disbarment, the United States Supreme Court, **lacking a quorum, has affirmed** the lower court's judgment.

Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, and Alito took no part in the consideration or decision of the petition.

The attorney's certiorari petition asserted that he was disbarred after engaging in speech that exposed alleged judicial corruption. The petition relied on *Williams-Yulee v. Florida Bar*, 135 S.Ct. 1656, 191 L.Ed.2d 570 (2015), in which the Supreme Court held that Florida's judicial conduct rule barring judicial candidates from personally soliciting campaign funds, and instead requiring the solicitations to be conducted by a committee, did not violate the First Amendment protection of speech. The restriction served the state's compelling interest in preserving public confidence in the integrity of the judiciary, and it did so through means narrowly tailored to avoid unnecessarily abridging speech.

The attorney contended that his conduct in exposing alleged judicial corruption involved speech that promoted confidence in the legal profession and the justice system, warranting First Amendment protection.

The Supreme Court's order cited a federal statute providing that when the Court lacks a quorum and the only qualified Justices are of the opinion that the case cannot be heard and determined at the next Term of the Court, the Court must enter an order affirming the judgment of the court below, with the same effect as an affirmance by an equally divided court. See 28 U.S.C.A. § 2109. (Case below: (unpublished), No. S226199 (Cal. May 13, 2015).)

Missud v. Court of Appeals of Cal., First Appellate Dist., No. 15-5601, Oct. 13, 2015, 2015 WL 4751689.

West Key Number Digest: Federal Courtst ⚖ 3214

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EXHIBIT ONE

587 So.2d 1342 (Table)
(The decision of the Florida District Court of Appeal is referenced in the Southern Reporter in a table captioned 'Florida Decisions Without Published Opinions.')
District Court of Appeal of Florida,
Fifth District

Willoughby (**Lonnie** E., Jr.)
v.
Willoughby (Leona)

NOS. 89-2541, 90-1056
|
OCT 08, 1991

Synopsis
Appeal From: Cir.Ct. (Putnam)

Opinion

Aff.

All Citations

587 So.2d 1342 (Table)

End of Document

EXHIBIT TWO

KeyCite Yellow Flag - Negative Treatment
Distinguished by Silvestrone v. Edell. Fla.App. 5 Dist., September 12, 1997

643 So.2d 1098
District Court of Appeal of Florida,
Fifth District.

Lonnie E. WILLOUGHBY, Jr., Appellant,
v.
DOWDA AND FIELDS, CHARTERED f/d/b/a Dowda and Fields, P.A. and Alan B. Fields, Jr., Individually, Appellees.

No. 93–2440.
|
July 29, 1994.
|
Opinion Granting Rehearing or Clarification Sept. 30, 1994.

Synopsis
Law firm brought suit against client for fees, and client counterclaimed for malpractice. The Circuit Court, Putnam County, Stephen L. Boyles, J., entered summary judgment against client on malpractice counterclaim on limitations ground. Client appealed. The District Court of Appeal, W. Sharp, J., held that: (1) claim was not barred by limitations; (2) even if time barred, malpractice claim could nonetheless be asserted as setoff or recoupment to claim for fees; and (3) alleged pendency of federal litigation involving same claim was not ground to dismiss claim; and (4) defense of recoupment could be asserted against law firm only, not attorney personally.

Reversed and remanded.

West Headnotes (4)

[1] **Limitation of Actions**
⚖Negligence in Performance of Professional Services

Statute of limitations on malpractice claim did not begin to run until lower court's judgment adverse to client was affirmed on appeal.

2 Cases that cite this headnote

[2] **Limitation of Actions**
⚖Set-Offs, Counterclaims, and Cross-Actions

Even if client's malpractice claim was otherwise time barred, client was entitled to setoff his claim against sums awarded in law firm's suit for fees.

2 Cases that cite this headnote

[3] **Appeal and Error**
⚖Judgment

Fact that same malpractice claim might be pending in federal litigation between parties was not grounds to uphold summary judgment granted below on other grounds where record was insufficient to establish facts of federal litigation and claim could nonetheless be asserted in state court as setoff to law firm's claim for fees.

[4] **Attorney and Client**
⚖Deductions and Forfeitures

Client's claim in recoupment, based upon alleged malpractice in providing legal services to him, could not be utilized defensively against attorney individually in lawsuit to collect legal fees that had been instituted by law firm only, since attorney personally had instituted no claim against client.

1 Cases that cite this headnote

EXHIBIT THREE

Attorneys and Law Firms

***1098** Lonnie E. Willoughby, Jr., pro se.

Alan B. Fields, Jr., Palatka, for appellees.

W. SHARP, Judge.

Willoughby appeals from a summary judgment denying him any affirmative relief on his malpractice counterclaim filed in a lawsuit brought by Fields (an attorney), and Fields' professional association, for legal services. Willoughby's counterclaim arose out of the same litigation as Fields' suit for fees. The trial judge ruled that Willoughby's malpractice claim was barred by the two-year statute of limitations,[1] because he was aware of Fields' alleged malpractice as of October 3, 1989, and he did not file his counterclaim until September 19, 1992. We reverse.

[1] Fields concedes the summary judgment cannot be based on the statute of limitations bar. In the first place, the statute does not generally begin to run until the underlying lawsuit in which the claimed malpractice took place has been finally lost on appeal. *Edwards v. Ford*, 279 So.2d 851 (Fla.1973); *Richards Enterprises, Inc. v. Swofford*, 495 So.2d 1210 (Fla. 5th DCA 1986); *Magic World, Inc. v. Icardi*, 483 So.2d 815 (Fla. 5th DCA 1986); *Adams v. Sommers*, 475 So.2d 279 (Fla. 5th DCA 1985). That did not occur in this case until October 8, 1991, when the lower court's judgment was ***1099** affirmed (adversely to Willoughby) by this court. Other circumstances may start the statute running earlier, but summary judgment was premature on this basis.

[2] Further, even if time-barred, Willoughby is entitled to set off his claim against Fields or his professional association for sums awarded in the suit for fees. *See Allie v. Ionata*, 503 So.2d 1237 (Fla.1987); *Payne v. Nicholson*, 100 Fla. 1459, 131 So. 324 (1930).

[3] Fields argues the summary judgment should be upheld, although granted for the wrong reason, because Willoughby is suing Fields in the United States District Court for Florida on the same cause of action. *See Birnholz v. Steisel*, 338 So.2d 862, 863 (Fla. 3d DCA 1976). However, the record in this case is insufficient to establish anything substantive with regard to the federal litigation. And, in any event, it does not address Willoughby's right to assert his malpractice claim by way of set off or recoupment.

REVERSED and REMANDED.

GOSHORN and PETERSON, JJ., concur.

ON MOTION FOR REHEARING AND/OR CLARIFICATION

W. SHARP, Judge.

[4] We grant the motion for rehearing and/or clarification to clarify that Fields, individually or personally, cannot be subject to recoupment or set off on a claim brought by Willoughby.

This lawsuit was brought solely by Fields' law firm, Dowda & Fields, a professional association. Fields did not, in his personal or individual capacity, institute a claim against Willoughby. Recoupment is only available as a defense when an affirmative claim has been asserted against a party. It is well established that the defense of recoupment may be asserted defensively where the underlying claim is barred by the statute of limitations. However, this principle does not apply in the present case because Fields personally has instituted no claim against Willoughby. Thus, on remand, Willoughby's claim in recoupment cannot be utilized defensively against Fields individually. Willoughby's recoupment claim, in this case, should be limited to Dowda and Fields, P.A., on remand.

In all other respects, the motion is denied.

GOSHORN and PETERSON, JJ., concur.

All Citations

643 So.2d 1098, 19 Fla. L. Weekly D1617

Footnotes

1 § 95.11, Fla.Stat. (1993).

1 *See Allie v. Ionata*, 503 So.2d 1237 (Fla.1987).

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