

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2019-000797

RECEIVED

DEC 31 2019

SC Court of Appeals

James E. Carroll, Jr., ... Appellant,

v.

Isle of Palms Pest Control, Inc., SPM Management Company, Inc. and Terminix Service, Inc.,
..... Defendants,

Of which Isle of Palms Pest Control, Inc. and SPM Management Company, Inc. are Respondents.

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT

I. THE TRIAL JUDGE ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT WHEN, ON THE EVE OF TRIAL, THE TRIAL JUDGE WAS IN POSSESSION OF EVIDENCE THAT MAY CREATE AN ISSUE OF FACT

The crux of the Respondents' Initial Brief rests with whether or not Carroll's Memo in Opposition was made a part of the record. Whether the Memo in Opposition was filed or not is immaterial to the Order Granting Partial Summary Judgment and to this appeal. The Memo was available to the trial court, which received it via email, and it was referenced at the hearing. Stating that the trial judge did not consider the Memo in his ruling is simply false.

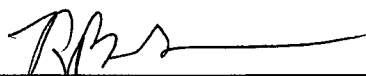
Furthermore, the timing of the hearing on the motion for summary judgment cannot be ignored and supports reversal of the trial court. The trial court heard the motion for summary judgment when the parties were in court for the trial of this matter. Counsel, the parties and the witnesses were present or available. For the Respondent to argue that it would have been prejudiced, at that time, to have to respond to facts offered in opposition to summary judgment, is disingenuous. The Respondents were absolutely not prejudiced by the judge's consideration of the Memo that was emailed to him. The parties were in court to try the case, and they were all in possession of the same evidence that Carroll presented in his Memo. By claiming prejudice, Respondents would have this Court believe that they were not prepared for trial.

If the trial judge indeed did not consider the Memo in Opposition that was in his possession, with counsel, the parties and all witnesses available for trial at the time the motion was heard, then the judge improperly declined to consider evidence that was submitted and available to him when considering the motion before him and his grant of summary judgment should be reversed. While the parties were present and prepared for a full trial on the merits, rather than allow the case to proceed, the Respondents now argue that the trial judge correctly cut off relevant factual inquiry

to grant partial summary judgment, which is improper. To the contrary, when the trial judge knows that evidence that may create an issue of fact not only exists but abounds, particularly when the parties are in court for a trial, he should allow that evidence into the record. *See Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (“Summary judgment is a drastic remedy to be invoked cautiously and must be denied if [the non-moving party] demonstrates a scintilla of evidence in support of [his] claims.”); *S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001) (“[S]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.”).

CONCLUSION

For all of the foregoing reasons, this Court should reverse the circuit court’s order granting partial summary judgment as to Carroll’s negligence claim because material questions of fact precluded summary judgment.



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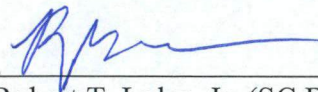
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellant's Final Brief and Appellant's Final Reply Brief comply with Rule 211(b), South Carolina Rules of Appellate Practice.



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