

THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

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**APPEAL FROM YORK COUNTY**  
Court of Common Pleas

Teasa K. Weaver, Master in Equity Court Judge

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2019-001968

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Edgar Bruce Massey..... Respondent

v.

James Anthony Fanning, Danny Joseph Baker,  
Michael Kaminski, a/k/a Michael Kaminsky,  
And Republic Finance, LLC,

Of Whom James Anthony Fanning is Appellant..... Appellant

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**INITIAL BRIEF OF APPELLANT**

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**RECEIVED**

FEB 18 2020

**SC Court of Appeals**

James W. Boyd (SC Bar# 824)  
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## STATEMENT OF ISSUES

- I. THE TRIAL COURT ERRED IN HOLDING THAT IT WOULD BE INEQUITABLE TO PROHIBIT THE RESPONDENT FROM PARTITION BASED ON THE APPELLANT DISREGARDING THE TERMS OF THEIR AGREEMENT OF OCTOBER 5, 1979.
- II. IF THE APPELLANT BREACHED THE AGREEMENT OF OCTOBER 5, 1979, THE BREACH WAS NOT FUNDENMENTAL OR SUSTANTIAL SO AS TO DFEAT THE PURPOSE OF THE CONTRACT.
- III. THE RESPONDANT WAIVE ANY BREACH OF THE OCTOBER 5, 1979 AGREEMENT.
- IV. DID THE LOWER COURT ERR IN FINDING THAT THE APPELLANT RECEIVED \$5,000.00 IN RENT ON THE PROPERTY FROM DEFENDANT BAKER?

## STATEMENT OF THE CASE

On January 4, 2017, Edgar Bruce Massey brought an action against the Appellant, Danny Joseph Baker, Michael Kaminski, a/k/a Michael Kaminsky, Republic Finance, LLC, John Doe and Richard Roe, seeking to quiet title, seeking the sale or partition, requesting dissolving of partnership and accounting. Appellant, James Anthony Fanning filed an answer and cross-claim denying that the Plaintiff was entitled to the relief he sought in his complaint and asserted cross-claim against Kaminski and Baker. The Defendant Baker defaulted on the complaint and cross-claim. The Defendant Kaminski filed an answer and cross-claims against Defendant Baker and Appellant Fanning. This matter came for a hearing before the Honorable Teasa Weave on December 4, 2018. The Defendants Massey and Kaminsky did not appear. Judgement were awarded on behalf of the Appellant Fanning against Defendants Massey and Kaminsky. The cross-claims of Defendant Kaminski were dismissed. The Court issued its Order on September 23, 2019. The Court granted the Partition and ordered the Appellant to provide a full accounting of

all amounts received from Defendant Baker and to pay the Plaintiff \$5,000.00 representing one-half of the payment that Appellant received from Defendant Baker. The Appellant timely filed a Motion to Amended or Alter the Judgment. The Court heard arguments on the Motion on October 17, 2019. The Court issued its Order denying Appellant's Motion to Amend or Alter Judgment on November 6, 2019. On November 25, 2019, the Appellant filed and served a Notice of Appeal.

### FACTS

The Appellant and Respondent are the joint owners of property that is the subject of this action. On October 5, 1979, the parties entered an Agreement concerning the subject property. The Respondent's Agreement<sup>1</sup> that provided that the parties waived any right to sale the property without the consent of the other and parties waived any right to unilaterally force any sale or division of the property. The contract was drawn up by the Respondent's Attorney<sup>2</sup>. At one point the Respondent and Appellant were in business operating a body shop<sup>3</sup>. The Respondent left the business and the Appellant was going to continue operating the body shop<sup>4</sup>. The contract forbidding partition was important to the Appellant, because he intended to continue operating the body shop<sup>5</sup>. There was a mobile home park on the property. The Respondent and Appellant each had mobile homes on certain lots, would receive the rent, were responsible for the expenses of their respective mobile homes and would receive expenses for the mobile home<sup>6</sup>. Pursuant to the

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<sup>1</sup> Plaintiff's Exhibit 1;

<sup>2</sup> Transcript December 4, 2018, page 7, lines 21-23;

<sup>3</sup> Transcript December 4, 2018, page 36, lines 3-12;

<sup>4</sup> Transcript December 4, 2018, page 37, lines 3-20;

<sup>5</sup> Transcript December 4, 2017, page 37, lines 22 – Pages 38, line 22;

<sup>6</sup> Transcript December 4, 2018, page 39, lines 20- Pages 41, line 1;

contract<sup>7</sup> Respondent relinquished any rights, claims or interest he had in the business known as Rock Hill Paint and Body Clinic and provided that the Appellant will pay no rent on the business portion of the real estate. On May 6, 2016, the Appellant entered into a written agreement with the Appellant Baker. The May 6, 2016 Agreement with Defendant Baker provided that the Appellant Fanning would sale Defendant Joseph Baker the business of Rock Hill Paint and Body Clinic. The Agreement expressly provided that Defendant Baker would acquire an interest in the building or real property upon which the business or the rental units are located until payment in full had been made. Paragraph Six (6) of the Agreement noted that the real property and the rental units were subject to a contract dated October 5, 1979, between the Appellant Fanning and Respondent Edgar Bruce Massey. The Agreement stated that the Appellant would be responsible to comply with that Agreement. Appellant and Defendant Baker entered into an amended agreement dated October 21, 2016, which provided that Defendant Baker would be responsible in purchasing Respondent Edgar Bruce Massey's interest in the real property<sup>8</sup>.

The Defendant Baker paid \$6,000.00 to the Appellant made one other payment.<sup>9</sup> Defendant Baker did not comply with the Agreement and was evicted from the property.<sup>10</sup> In its Order, the Court granted the Respondent, on the grounds it was inequitably to exhibit partition because the Appellant ignored the Agreement by signing the contract with Baker and by withholding rents. The court further order the Appellant to \$5,000.00 representing one-half of the payment that Appellant received from Baker.

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<sup>7</sup> Plaintiff's Exhibit 1

<sup>8</sup> Plaintiff's Exhibit 8

<sup>9</sup> Transcript December 4, 2018, page 32, lines 23-Page 33, line 3;

<sup>10</sup> Transcript December 4, 2018, page 44, lines 15-18;

## ARGUMENTS

**I. THE TRIAL COURT ERRED IN HOLDING THAT IT WOULD BE INEQUITABLE TO PROHIBIT THE RESPONDENT FROM PARTITION BASED ON THE APPELLANT DISREGARDING THE TERMS OF THEIR AGREEMENT OF OCTOBER 5, 1979.**

The Agreement of October 5, 1979,<sup>11</sup> provided that there, “shall not be a sale or conveyance of the subject real estate without consent of each party; the party specifically understand that they are hereby waiving any right they may have initiate and pursue any partition or similar action to unilaterally force any sale or division of the subject property; the Parties specifically understand and declare that there shall be no change of any form or manner whatsoever in the subject property without the mutual consent of each.” The Court held that while neither party adhered to the terms of the Agreement that the Appellant ignored its terms by signing two contracts with Defendant Baker without Respondent’s consent and while withholding rent<sup>12</sup>. Appellant entered into two contracts with Defendant Baker, one dated May 6, 2016 and another dated October 21, 2016. Pursuant to the October 5, 1979 contract, the Respondent had no interest in the business known as Rock Hill Paint and Body Clinic. Appellant agreed to transfer the real property, to Defendant Baker when \$500,000.00 had been paid. Paragraph 6 of the Agreement recognized the October 5, 1979 Agreement. The May 6, 2016 Agreement provided that the Appellant would be responsible for complying with the terms of the Agreement of October 5, 1979. The May 6, 2016 Agreement recognized the existence and terms of the October 5, 1979 Agreement. It was not a breach of the October 5, 1979 Agreement for Appellant to enter into the May 6, 2016 Agreement. The Agreement of May 6, 2016, was amended by the October 21, 2016 Agreement which provided that Defendant Baker would

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<sup>11</sup>Plaintiff’s Exhibit 1;

<sup>12</sup> Order of September 23, 2019

be responsible for purchasing Respondent Edgar Bruce Massey's interest in the real property. Except as modified by the Agreement of October 21, 2016 the Agreement of May 6, 2016 remained in full force and effect. The Agreements with Defendant Baker were not a breach or repudiation of the agreement between the Appellant and Respondent but expressly acknowledged that the Agreement had to be complied with by Appellant. The Agreements with Defendant Baker were contingent on the compliance with the October 5, 1979 Agreement

**II. IF THE APPELLANT BREACHED THE AGREEMENT OF OCTOBER 5, 1979, THE BREACH WAS NOT FUNDENMENTAL OR SUSTANTIAL SO AS TO DEFEAT THE PURPOSE OF THE CONTRACT.**

Where a breach is not so material as to defeat the purpose of the contact, the non-breaching party is compensated by damages. *Ackerman v. McMillian* 314 S.C. 268, 442 S.E.2nd 618, S.C. App. 1994. In the present case, the contract Fanning had with Baker was never complied with by Baker. Baker defaulted on the Agreement and the purchase never happen<sup>13</sup>. The parties remained in the same position they were prior to the Agreement with Defendant Baker. Therefore, any breach was never material and there was no damage to the Respondent.

**III. THE RESPONDANT WAIVED ANY BREACH OF THE OCTOBER 5, 1979 AGREEMENT.**

A waiver is the intentional relinquishment of a known right. *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307, SC 339, 415 ES2nd 384 (1992) Respondent brought a lawsuit against Defendant Baker for water bills owed on the property. A judgment was obtained against Defendant Baker which was later set aside.<sup>14</sup> By seeking

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<sup>13</sup> Transcript December 4, 2018, Page 33, lines 11-18 - Page 44, line 15-18;

<sup>14</sup> Transcript December 4, 2018, Page 24, lines 22- Page 25, line 24;

payment from Defendant Baker rather than Appellant, the Respondent acknowledged Defendant Baker's responsibilities pursuant to the Agreement Defendant Baker had with Appellant and waived any right to complain that the Agreements were invalid.

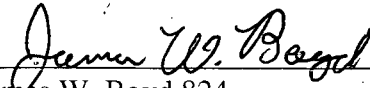
**IV. DID THE LOWER COURT ERR IN FINDING THAT THE APPELLANT RECEIVED \$5,000.00 IN RENT ON THE PROPERTY FROM DEFENDANT BAKER?**

The lower court ordered the Appellant to pay to the Respondent \$5000.00, representing one-half of the payments Appellant received from Baker. Defendant Baker paid the Appellant \$6,000.00 toward a down payment and was to pay \$4,000.00 per month. The Agreement of October 21, 2016, provided the payments were a down payment on the business known as Rock Hill Paint and Body Clinic. The October 5, 1979 Agreement provided that the Agreement did not included the operations, profits or loss of the business known as Rock Hill Paint and Body Clinic. The Respondent had no interest in Rock Hill Paint and Body Clinic. The amounts paid by Defendant Baker was a down payment towards the business. The Respondent is not entitled to any portion of the down payment.

**CONCLUSION**

Fore the reason stated, the Court should reverse the judgment of the Circuit Court.

Respectfully Submitted,



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February 17, 2020

**JAMES W. BOYD**

**Attorney at Law**

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February 17, 2020

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

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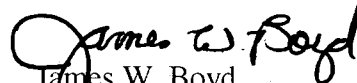
Re: Massey v. James Anthony Fanning, et al  
Appellate Case No.: 2019-001968

Dear Ms. Kitchings:

Enclosed is the Appellant's Initial Brief, Designation of Matter and Proof of Service for the above referenced matter. Thank you for your attention to this matter.

With kind regards, I am

Sincerely,

  
James W. Boyd  
Attorney for Appellant

JWB/klc  
Enclosures  
cc: John Martin Foster

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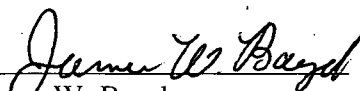
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James Anthony Fanning, Danny Joseph Baker,  
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And Republic Finance, LLC,

Of Whom James Anthony Fanning is Appellant..... Appellant

PROOF OF SERVICE

I, certify that I served the Appellant's Initial Brief and Designation of Matter on Edgar Bruce Massey by depositing a copies of the same in the United States mail, postage prepaid, on February 17, 2020, addressed to its attorney, Mr. John Martin Foster, PO Box 106, Rock Hill, SC 29731-6106.

  
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February 17, 2020