

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-4211
)	
William E. Danielson,)	
)	
Plaintiff,)	
)	
v.)	
)	
Tyler Beauregard, Caroline Beauregard, and)	
Born Capital, LLC,)	
)	
Defendants.)	

**ORDER AND JUDGMENT
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SC Court of Appeals**

A trial was held on October 17, 2019, attended by the attorneys of record. Defendant Tyler Beauregard participated *pro se*. From the testimony and evidence presented at trial, I find and conclude as follows:

FINDINGS OF FACT

This case arises out of a Rental Agreement entered into on May 3, 2013 for the property located at 2302 Atlantic Avenue, Sullivan’s Island, South Carolina (“Property”). The Property was owned by Plaintiff William E. Danielson (“Danielson”). Evidence and the testimony at trial shows that the Rental Agreement was entered into between Danielson as Landlord and Tyler Beauregard, who executed his name to the lease and the name of his wife, Caroline Beauregard, without her permission (when referenced collectively, the “Beauregards”). Born Capital, LLC (“Born Capital”) was also a party to the Rental Agreement as Guarantor and could not recall Caroline Beauregard physically signing the lease or providing permission for Tyler to sign the lease on her behalf. Caroline Beauregard is considered a party to the lease pursuant to S.C. Code Sec. 27-40-320.

The term of the Rental Agreement was from June 1, 2013 to May 31, 2014. Per the Rental Agreement, rent was \$6,500.00 per month with a late fee of \$200.00 per day if rent was paid after the third day of the month, and an additional fee of \$500.00 per day if rent was paid after the fifth day of the month. The Rental Agreement also provided for the recovery of actual damages and attorney's fees if a proceeding had to be brought based on the Tenants' nonpayment of rent. The remedy after termination included damages for reasonable attorney's fees, collection costs, and court costs. The Rental Agreement provided that "all obligations of Tenants are Guaranteed by Born Capital, LLC as if Born Capital LLC were the Tenant." Based on the testimony at trial, the Landlord would not have leased the Property to the Beauregards without the Born Capital Guaranty.

The Beauregards occupied the property in June, July, and August 2013. The Beauregards vacated the property in September of 2013 and paid no further rent.

The above captioned lawsuit was filed on August 12, 2016, wherein Danielson alleged the Beauregards owed in excess of \$100,000 stemming from their breach of the Rental Agreement. Danielson also named Born Capital in the lawsuit by virtue of its Guaranty of the Rental Agreement. In an effort to minimize its exposure stemming from its position as Guarantor, Born Capital settled with Danielson for \$80,000. Born Capital asserted cross-claims for contractual and equitable indemnity against Tyler Beauregard and Caroline Beauregard for the money Born Capital paid to Danielson, along with the costs and attorney's fees relating to this action. Caroline Beauregard asserted cross-claims for abuse of process against Born Capital.

This Court entered an Order of Default Judgment against Tyler Beauregard on September 21, 2018, regarding Born Capital's claims against him. Tyler Beauregard participated in the trial of this matter, which served as the damages hearing in connection with his Default Judgment pursuant to Rule 55(b) of the South Carolina Rules of Civil Procedure.

CONCLUSIONS OF LAW

A. Born Capital's Default Judgment Damages against Tyler Beauregard

At the trial of this matter, this Court heard testimony and considered evidence as required to determine the amount of damages to which Born Capital is entitled under its Default Judgment against Tyler Beauregard. *See* Rule 55(b), SCRPC. The general rule is that all costs, including settlement figures, attorneys fees and costs, and other costs necessary to defend the action, are recoverable in equitable indemnification cases where (1) the settlement is bona fide, with no fraud or collusion by the parties; (2) the decision to settle is a reasonable means of protecting the innocent party's interest; and (3) the amount of the settlement is reasonable in light of the estimated damages and the risk and extent of exposure if the case is tried. *See Griffin v. Van Norman*, 302 S.C. 520 (Ct. App. 1990); *See also Addy v. Bolton*, 257 S.C. 28 (1971).

After reviewing the evidence and listening to the testimony at trial, I find that Born Capital was not at fault for Danielson's damages; that Born Capital's settlement with Danielson was bona fide, with no fraud or collusion; and that its settlement was reasonable given the facts and circumstances. I find that Born Capital satisfied the elements discussed in the *Griffin* and *Addy* cases, *supra*, and that Born Capital is entitled to damages against Tyler Beauregard in the amounts set forth below.

I find that, as a matter of law, Born Capital's settlement payment of \$80,000.00 to Danielson was reasonable given the facts and circumstances. The evidence and testimony showed that the attorneys fees and costs incurred by Born Capital was \$34,213.98, and I find this amount to be reasonable given the nature of the representation and circumstances of this matter. Further, the uncontroverted testimony was that Born Capital incurred \$6,000.00 of expenses relating to the claims asserted by Born Capital in this lawsuit, and I find such additional expenses as reasonable and necessary under the circumstances. Accordingly, I find that Tyler Beauregard is liable to Born

Capital in the aggregate amount of \$120,213.98, which amount shall accrue interest at the applicable Judgment Rate until satisfied.

B. Born Capital's Cross-claims against Caroline Beauregard

Born Capital asserted cross-claims for contractual indemnity and equitable indemnity against Caroline Beauregard. "A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 366 S.C. 53, 60 (Ct. App. 1999).

As to the contractual indemnity claim, a contract for indemnity is to be construed "in accordance with the rules for the construction of contracts generally." *Concord and Cumberland Horizontal Property Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 647 (Ct. App. 2018). Based on the facts and review of the evidence, I find that the Rental Agreement which is the subject of this lawsuit contains no contractual indemnity provision. Accordingly, I find Born Capital is not entitled to assert a claim for contractual indemnity against Caroline Beauregard, and that claim for contractual indemnity is hereby dismissed.

As to the equitable indemnity claim, "for a party to recover under a theory of equitable indemnification, three things must be proven: (1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 366 S.C. 53, 63 (Ct. App. 1999); *Addy v. Bolton*, 257 S.C. 28 (1971).

Based upon the evidence presented at trial and the standard set forth in *Vermeer, supra*, I find that both Tyler Beauregard and Caroline Beauregard were parties to the Rental Agreement which is the subject of this lawsuit; that Plaintiff Danielson's damages were caused by the Beauregards' failure to pay rent pursuant to the Rental Agreement; that Born Capital was not at

fault for Danielson's damages; and that Born Capital was damaged by having to pay a reasonable settlement to Danielson for damages that were the fault of the Beauregards. Accordingly, I find that the elements of *Vermeer* are satisfied as to Born Capital's cross claim of equitable indemnity against Caroline Beauregard.

However, the right of equitable indemnity only "exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." *Toomer v. Norfolk Southern Ry. Co.*, 344 S.C. 486, 491 (Ct. App. 2001). Although there are some connections between Caroline Beauregard and Born Capital due to her husband's position with the company, I find as a matter of law that these connections do not rise to the level necessary to satisfy the "special relationship" element of an equitable indemnity claim.

I find that Tyler Beauregard was an employee of Born Capital; that Caroline Beauregard was married to Tyler during the time in which they resided in the house as tenants of Danielson; that Tyler and Caroline both interacted socially with officers and employees of Born Capital; that they and their children both benefited from the salary and benefits paid by Born Capital to Tyler; that rent paid to Danielson was paid by Born Capital as part of Tyler's compensation; and that without Born Capital's guarantee, Danielson would not have leased the property to Tyler and Caroline Beauregard.

I find as a matter of law that the relationship between an employer and the spouse of an employee falls short of the standard of a special relationship required for liability under equitable indemnity and that the evidence in the record demonstrates clearly that the relationship between Born Capital and Caroline Beauregard is too far removed and too attenuated to constitute the special relations required by South Carolina jurisprudence. Accordingly, Born Capital's claim for equitable indemnity against Caroline Beauregard must be dismissed.

C. Caroline Beauregard's abuse of process cross-claims against Born Capital

Caroline Beauregard asserted an abuse of process cross-claim against Born Capital. In *Food Lion, Inc. v. UFCW*, 351 S.C. 65 (Ct. App. 2002) (*cert. dismissed as improvidently granted*, 2004) the South Carolina Court of Appeals describes the standard by which one may be held liable for abuse of process. I find as a matter of law that the claims asserted by Born Capital were not improper or asserted for any purpose other than the assertion of claims for collection of money under the circumstances of this lawsuit, and that such claims do not constitute an abuse of process. Accordingly, Caroline Beauregard's claim for abuse of process against Born Capital must be dismissed.

For the foregoing reasons, it is hereby

ORDERED, that Tyler Beauregard is liable to Born Capital, LLC in the amount of \$120,213.98, and that such amount shall accrue interest at the applicable Judgment Rate until satisfied; it is further

ORDERED, that Born Capital's claims for Contractual Indemnity and Equitable Indemnity against Caroline Beauregard be, and they are hereby, dismissed; it is further

ORDERED, that Caroline Beauregard's claim for Abuse of Process against Born Capital be, and it is hereby, dismissed.

IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: William E Danielson VS Tyler Beauregard , defendant, et al

Case Number: 2016CP1004211

Type: Order/Judgment and Form 4

So Ordered

s/Mikell R. Scarborough 3062

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