

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-19-00168

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May 22 2020

SC Court of Appeals

Appellate Case No. 2019-001689

Bettis C. Rainsford,Appellant,

v.

Apex Bank, Jim Clayton, Matt Daniels, and Brad Hailey,Defendants,

Of whom, Matt Daniels and Brad Hailey are theRespondents.

**APPELLANT’S REPLY TO APEX BANK’S RESPONSE
IN OPPOSITION TO THE PETITION FOR SUPERSEDEAS**

The issue of whether a Supersedeas should be granted by the Court of Appeals is intimately linked to the decision of the circuit court to grant a dismissal to Respondents Matt Daniels and Brad Hailey (“Respondents”). That decision was deeply flawed and without process to the Appellant. First, as set forth in the Appellant’s initial brief in the pending appeal, the ruling was made at a hearing for which the Appellant was not provided notice that the Motion to Dismiss would be heard, and thus the Appellant had had no opportunity to brief the court on this issue.

Secondly, the circuit court denied the Appellant any jurisdictional discovery, applying a “prima facia” standard rather than the “clearly frivolous” standard which was a clear error of law. Thirdly, the circuit court based its decision to dismiss on criteria in affidavits submitted by Respondents which were irrelevant and ignored the fact that the Respondents had “purposely directed” their company to breach the agreement with the Appellant and to commit the torts against him.

In his comprehensive recitation of the facts laid out in the Second Amended Complaint, the Appellant clearly set forth facts which supported his argument that the Respondents “personally directed” Apex to breach the agreement and conspired with each other, with Apex, and with Defendant Clayton to breach the agreement, to engage in unfair trade practices in violation of the South Carolina Unfair Trade Practices Act (SCUTPA), and to interfere with the prospective advantage of the Appellant.

In its Response, Apex fails to recognize Respondents’ actions are integral to the existence of the contract between Appellant and Apex and Apex’s subsequent breach of the contract. It argues that the Appellant is attempting to stay every issue in four separate but consolidated cases just because the individual defendants have been dismissed. This argument entirely misses the point that in all of the cases the central and determinative issues are whether an agreement was reached between the authorized representative of Apex and the Appellant and whether that agreement was breached by Apex at the direction of Respondents and Clayton. In fact, these cases were consolidated because, as Judge McMahan of the circuit court found, they all involve the same series of events and share common questions of fact. Thus, the issues in all four cases, especially in the three currently pending motions, are inextricably intertwined, and cannot be fairly tried without all of the defendants, including the Respondents, as parties to the action.

The Appellant's allegations that the defendants conspired with each other to breach the agreement (Amended Complaint, paragraphs 82, 86, 92), upon which his causes of action all stand, brings before the court the issues of discovery and evidence with respect to conspiracy. As this court has noted in *Island Car Wash, Inc. v. Norris*, 292 S.C. 150 (Court of Appeals, 1987):

[B]road discretion and great latitude are permitted in the reception of evidence in conspiracy cases. The law permits great latitude in the admission of circumstantial evidence tending to establish a conspiracy and to connect those advising, encouraging, aiding, abetting and ratifying the overt acts committed for the purpose of carrying into effect the objects of a conspiracy; the jury should have before them and are entitled to consider every fact which has a bearing on and a tendency to prove the ultimate fact in issue.

Although Apex has argued that Daniels and Hailey can still be fact witnesses even after their dismissal, the Appellant's efforts at discovery will be greatly hindered if he is not allowed full discovery against them as parties to the action.

The last substantive review of this case was undertaken by Judge Mary Geiger Lewis of the United States District Court for the District of South Carolina. In her decision of August 3, 2017, she reversed the dismissal of the case by the bankruptcy court, stating: "[We are] unable to hold, as a matter of law, the alleged agreement fails to satisfy the requirement in the Statute of Frauds of a writing containing the essential terms of the parties' agreement" or "Moloney lacked authority to bind Apex [Bank] to the alleged agreement." Ever since that decision was handed down, the Appellant has been trying to obtain the facts to support his case through discovery requests of the Respondents, Apex and Clayton.

However, all of these defendants have stonewalled every effort of the Appellant to gain the evidence to support his claims. They have not made any satisfactory response to any of the Appellant's many discovery requests. It was precisely in response to the Appellant's Motions to Compel Discovery that the circuit court held the hearing on August 13, 2019, at which it

precipitously and erroneously handed down its ruling that the Respondents were dismissed from the case.

Although Apex owns some small community banks in small towns in East Tennessee, it is not really a bank, but rather a predatory hedge fund which seeks to prey on borrowers and guarantors who have experienced financial difficulties by purchasing their loans and deficiency judgments at steep discounts and then pursuing the unfortunate borrowers and guarantors with a vengeance. Apex's strategy entails using the courts of this nation to take advantage of borrowers and guarantors wherever it can. Apex and the Respondents have become highly skilled in using the courts to their advantage and have used every tool at their disposal to avoid disclosures of any information which might reveal their questionable business practices. For the Appellant in this case to be deprived of his right to reasonable discovery against the Respondents is grossly unfair.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests the Court grant his Petition for Supersedeas. The decision of the circuit court to dismiss the Respondents without notice to Appellant, to refuse jurisdictional discovery for the Appellant in clear violation of the correct standard, and to dismiss the Respondents without even considering the fact that the record clearly includes evidence that they "purposely directed" Apex to breach the Agreement were all clear violations of any reasonable judicial standard. To allow this case to proceed without the Respondents in the case would irreversibly prejudice the Appellant. Therefore, the Appellant respectfully requests the Court to grant his Petition for Supersedeas in order to allow him to prevail in his appeal of the dismissal of the Respondents, and then to pursue his case against all of the defendants, including the Respondents.

RESPECTFULLY SUBMITTED,
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May 22, 2020.

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PROOF OF SERVICE

I certify that a true copy of Appellant's Reply to Apex Bank's Response in Opposition to the Petition for Supersedeas in this case has been served on the following, this 22nd day of May, 2020, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to the South Carolina Supreme Court's March 20, 2020 Order.

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(Signature page follows)

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May 22, 2020.

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Subject: Appellate Case No. 2019-001689: Rainsford v. Apex Bank, et al.
Date: Friday, May 22, 2020 11:27:00 AM
Attachments: [Reply to Apex"s Response to Supersedeas.pdf](#)
[Proof of Service - Reply to Apex Bank"s Response to Supersedeas.pdf](#)

All,

Please find attached a copy of Appellant's Reply to Apex Bank's Response to the Petition for Supersedeas and Proof of Service that we are filing with the Court of Appeals today, served on you pursuant to subsection (g)(3) of the Supreme Court's March 20, 2020 Order discussing the operation of the appellate courts during the coronavirus emergency.

Thank you,
Shanon



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