

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Business Court

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-23-2325
Appellate Case No. 2019-001909

Stop-A-Minit #17, LLC,Appellant,

v.

Beck Enterprises, Inc.,Respondent.

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. THE TRIAL COURT EITHER DID ALLOW APPELLANT TO AMEND THE PLEADINGS TO CONFORM TO THE EVIDENCE AT TRIAL OR ERRED IN FAILING TO GRANT APPELLANT'S MOTION AT TRIAL TO AMEND THE PLEADINGS TO CONFORM TO THE EVIDENCE PRESENTED AT TRIAL.

At trial, Appellant moved to amend the complaint to conform to the evidence presented at trial. (Tr. p. 54, lines 6-7). The Trial Court ruled on this motion at the trial and allowed evidence to be presented related to the issue of lack of consideration for the Indemnification Agreement. (Tr. P. 54, lines 14-17). In the Trial Court's first order, the Trial Court, in contradiction to its ruling on Appellant's motion to amend the pleadings, stated that "the Court is constrained by the parties' pleadings and therefore I find and conclude that the additional matters Plaintiff attempted to raise at trial and referred to in its closing argument brief are not properly before the Court and are thus excluded from consideration." (First Order, p. 6). Additionally, after the Trial Court's first order, Appellant moved for the trial court to alter, amend, or reconsider its ruling to not allow Appellant to amend the complaint to be consistent with the evidence presented at trial. (Appellant's Motion to Alter or Amend Judgment). The Trial Court, however, denied Appellant's motion to alter or amend judgment, (Second Order, p. 1), but without providing any reasoning or further allowing the motion to amend, and again in contradiction to its ruling during the trial.

According to Rule 15(b) of the South Carolina Rules of Civil Procedure, a party can request amendments to conform to the evidence at trial for issues not raised by the pleadings by express or implied consent. S.C. R. Civ. Pro. 15(b). If the pleading is amended to conform to the evidence, then issues raised at trial shall be treated as if they had been raised in the pleadings. *Id.* A motion to make such amendment of the pleadings as to conform to the evidence may be made by a party "at any time, even after judgment." *Id.* Additionally, "if evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to

be amended and shall do so freely when the presentation of the merits of the action shall be subserved thereby...” *Id.* The only time a court should not allow this is when the objecting party shows “that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.” *Id.* Even in that situation though, the court could grant a continuance to enable the objecting party to have time to prepare their defense. *Id.*

Rule 15 of the South Carolina Rules of Civil Procedure “strongly favors amendments and the court is encouraged to freely grant leave to amend.” *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017) (citing *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)). “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)). Leave to amend a pleading should be freely given in the absence of any apparent or declared reason, such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment.” *Id.*

Furthermore, when a trial court makes no finding of prejudice and the party opposing amendment made no showing of any, the trial court abused its discretion in denying amendment to pleadings to conform to evidence presented at trial. *Soil & Material Engineers, Inc. v. Folly Associates*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (1987). Under Rule 15(b), amendments to conform to the evidence presented at trial should be liberally granted when no prejudice to the opposing party shall result from it. *Id.* Additionally, “[t]he court should grant a continuance if

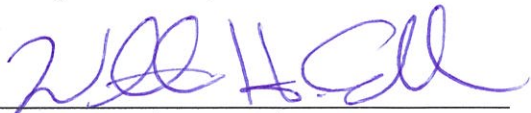
prejudice can be eliminated or substantially minimized by a continuance so that the opposing party can meet the evidence.” *Id.*

In this matter, the Trial Court erred in not allowing Appellant to amend the pleadings to conform to the evidence. Rule 15 of the South Carolina Rules of Civil Procedure strongly encourages courts to freely grant leave to amend and the Trial Court should have done so here. The evidence presented to the Trial Court by Appellant was a proper subject of relief for Appellant. Moreover, there is no proof of any apparent or declared reason, such as bad faith or undue delay, on the part of Appellant in moving to amend the pleadings to conform to the evidence presented at trial. By not making a finding of any prejudice to Respondent in allowing Appellant to amend the pleadings to conform to the evidence presented at trial, and no evidence of such presented by Respondent, the Trial Court abused its discretion in denying Appellant’s motion. Additionally, even if the Trial Court did find some sort of prejudice to the Respondent or the Respondent felt unprepared to present an argument against the amendments to the pleadings suggested by Appellant, the Trial Court could have granted a continuance in order to allow Respondent ample time to prepare for the additional evidence presented at trial. In examining Rule 15 of the South Carolina Rules of Civil Procedure, there is no reason why the Trial Court would not grant Appellant’s motion to amend the pleadings to conform to the evidence presented at trial and denying the motion was an abuse of discretion by the Trial Court.

CONCLUSION

In conclusion, Appellant has shown that its motion to amend the pleadings to conform with the evidence presented at trial should have been granted by the Trial Court and Respondent is incorrect in its assertion that the motion should have been denied.

Respectfully submitted,

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