THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-4211

Appellate Case No. 2020-000278

William E. Danielson, Plaintiff

v.

Tyler Beauregard, Caroline Beauregard, and Born Capital, LLC, Defendants

Of which Born Capital, LLC is the .....Appellant

and

Of whom Caroline Beauregard is the .....Respondent

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This matter arises from the Trial Court's Order dismissing the cross claim of Born Capital ("Born") for equitable indemnification against Carolina Beauregard ("Caroline") personally. (R. p. 458, lines 11-23). The action came before the Master-in-Equity by way of a Complaint filed by William E. Danielson ("Danielson") whereby he alleged both Tyler Beauregard ("Tyler") and his wife at the time, Caroline, breached the terms of a residential lease. Danielson also named Born, Tyler's former employer, as the guarantor.

STANDARD OF REVIEW

In reviewing a proceeding in equity, this court may find facts based on its own view of the preponderance of the evidence. Walker v. Brooks, 414 S.C. 343, 347, 778 S.E.2d 477, 479 (2015); Greer v. Spartanburg Technical College, 338 S.C. 76, 79, 524 S.E.2d 856, 858 (Ct. App. 1999). This broad scope of review; however, does not require this court to ignore the findings below when the trial court was in a better position to evaluate the credibility of the witnesses. Clardy v. Bodolosky, 383 S.C. 418, 679 S.E.2d 527 (2009).

FACTS

History of Born Capital, LLC

Born is a successful tech company with primary corporate offices in Chicago, Illinois. (R. p. 427, lines 2-4). Robert Haworth ("Buck") founded the company in 2002 with his son, Derek

Haworth ("Derek"), and they operate as co-founders and partners in the business. (R. p.398, line 25- p.399, line 10). Michelle Haworth ("Michelle"), Buck's daughter and Derek's sister, joined the company shortly thereafter as the Chief Operating Officer. (R. p.451, lines 2-5).

Tyler Joins the Born Team in 2011

Derek met Tyler in 1999 when working for the same employer, and prior to the creation of Born Capital. The two formed a professional and personal relationship. (R. p. 323, lines 1-12). Tyler and Caroline met in college in 1997 and married in 2002. (R. p. 251, lines 4-5). Derek offered Tyler a job at Born in 2011. At the time of the offer, Tyler and Caroline were living in Denver with their two children, ages 5 and 6, while Caroline was working as a school psychologist. (R. p.349, lines 18-19). Tyler accepted the position and moved his family to Chicago for a position in the sales division. (R. p. 322, lines 4-9). As the executive vice-president of global institutional sales, Tyler was tasked with selling cloud services and quickly became the company's highest paid and most valuable employee. (R. p. 317, line 20- p. 318, line 1; p. 405, line 20; p. 404, lines 5-9).

Caroline and Born Had No Relationship

Caroline was a "stranger" to Born and the Haworth family, having only met Michelle twice briefly at company parties and never setting foot in the Chicago offices. (R. p. 352, line 7- p. 353, line 5; p. 378, line 23- p.379, line 3; p. 419, lines 14-19). She maintained no personal or professional relationship with any member of the Haworth family. (R. p.353, lines 12-15). While in Chicago, Caroline cared for the two children and worked full-time as a behavioral interventionist, where she diagnosed and provided therapy to students with disabilities in middle and high schools. (R. p.349, lines 24-25). She saw Derek occasionally because of the personal

relationship between he and Tyler; however, her recollection of Derek was that he made her "uncomfortable" drinking around her children. (R. p. 379, lines 1-3; p. 380, lines 1-2; p. 388, lines 15-17). In sum, Caroline had no relationship, special or otherwise, with Born or any member of the Haworth family. (R. p.395, lines 8-19).

Born Needs Tyler in Charleston

In 2013, Born experienced problems managing its software project located in Charleston. According to Buck, the Charleston project was "Derek's child", and Derek needed Tyler to relocate to improve the management of the staff and continue his successful sales efforts. (R. p.406, line 11- p.407, line 1). Born's need in Charleston and Tyler's ability to earn demanded a quick relocation from Chicago with his family. (R. p. 322, lines 25-6; p.353, line 19- p. 354, line 7).

Lease Negotiations Without Caroline's Knowledge or Input

The hunt for a rental property near Charleston by Tyler and Derek began in earnest in 2013. (R. p. 323, lines 13-17). Tyler found Danielson's listing on Craigslist and commenced email communication in April. (R. p. 262, lines 7-17). During the negotiation and through execution of the lease, Danielson never met Caroline, never communicated with her, and never witnessed her execute the lease. (R. p. 267, lines 8-23; p. 278, lines 15-18). Tyler did not discuss this property with Caroline (R. p. 365, line 16); he did not include Caroline in the negotiation; and she was not given an opportunity to see the property or review the lease. (R. p. 323, lines 20-23).

During lease negotiations, Danielson required that Born guarantee "all payments and obligations of tenants." (R. p. 421, lines 12-16). Buck understood that he could have sought

contractual indemnification terms from Tyler and Caroline in the lease but chose not to. (R. p. 424, lines 17-22). Buck also understood that he and Derek could have negotiated better terms for the company with Danielson but chose not to. (R. p. 426, lines 6-9).

Derek and Tyler Forge Caroline's Signature to the Lease to Seal the Deal

Following two weeks of email discussion between Danielson, Tyler, and Derek, Danielson had a copy of the Lease executed by Tyler with Derek signing as the sole guarantor on Friday, May 3, 2013 at 4:38 p.m. (R. p. 281, lines 4-19). The following day, Danielson requested that a copy of the lease be executed by both Caroline and a witness to her signature. (R. p. 282, line 20- p. 283, line 6). When Tyler provided no response, Danielson reposted the house on Craigslist. (R. p. 284, lines 1-5). As Danielson intended, the reposting got Tyler and Derek's attention increasing their sense of urgency. (R. p. 285, lines1-4). It was at that moment that Tyler and Derek made the decision to forge Caroline's name to the lease. (R. p. 323, line 24- p. 324, line 7). Caroline was never consulted, nor did she give permission for Tyler to sign her name on this lease. (R. p.356, line16- p. 357, line 22). In fact, Caroline recalls no conversation with Tyler about the lease, as she was solely focused on finishing the school year with the two children while preparing them to move across country to Charleston. (R. p. 371, line 25- p. 372, line 3). Tyler confirmed he did not include Caroline in the negotiations. (R. p. 323, line 13- p. 324, line 7).

After Tyler signed Caroline's name to the lease, Derek asked his sister Michelle, a fellow officer at Born, to retrospectively witness all signatures on the lease including Caroline's forged signature. Michelle's signature appears as a witness to the signatures on the lease; however, when asked she had no recollection of any of the signatories physically appearing and signing

before her. (R. p. 451, line 25- p. 452, line 2). Knowing that Danielson would not have accepted the lease if Caroline had not signed before a witness, Tyler and Derek did not disclose to or clarify for Danielson the fact that Caroline did not actually sign the lease or that Michelle did not witness any physical signatures. (R. p. 292, line 23- p. 293, line 2; p. 303, lines 13-16; p. 323, line 24- p. 324, line 7; p. 434, line 24- p. 435, line 4). Prior to moving to Charleston, Caroline never saw the subject rental house in person or in pictures (R. p. 354, lines 15-17), nor had she ever visited Sullivan's Island (R. p. 332, lines 4-5). She did not want to move the boys to Charleston, away from her family in the Midwest (R. p. 329, lines 15-16; p. 354, lines 18-23), and she knew nothing about Derek and Tyler's forging her signature on the lease. (R. p. 344, lines 6-12).

Tyler Moves his Wife and Children to Charleston and Chaos Ensues

Tyler and Caroline moved into the rental house in May of 2013 and Caroline immediately noticed the house's disappointing state of repair. (R. p. 332, lines 9-10; p. 371, lines 18-19). Tyler complained of multiple problems to Danielson, including a malfunctioning refrigerator, ongoing plumbing issues, exposed outlets, and bee infestation. (R. p. 273, lines 4-24). As problems began to emerge with the house, communications between Danielson and Tyler quickly became contentious. (R. p. 289, lines 12-14). Born continued to deduct the rental value from Tyler's monthly salary and forward payments to Danielson for June, July, and August. (R. p. 343, lines 19-25; p. 345, lines 10-12). Tyler traveled most days of the week, and on two occasions, when Tyler was traveling for work, Caroline was forced to take the two children to a hotel out of fear of Danielson's bizarre behavior on the premises and contentious communications. (R. p. 324, line 21- p. 325, line 11; p. 378, lines 7-11).

Born was copied on emails between Danielson and Tyler concerning the issues with the house and Danielson's behavior but took no action to assist. (R. p. 303, line 21- p. 304, line 10). Eventually, Tyler retained a private lawyer who recommended the family move to another location in August of 2013, which they did. (R. p. 314, lines 1-8; p.341, lines 16-18). Derek agreed with Tyler's decision to move after reading the threatening communications from Danielson. (R. p. 337, line 23- p. 338, line 8).

The Relationship Between Tyler and Born Deteriorates

The relationship between Tyler and Born soured, culminating in his resignation in 2016 after the filing of Danielson's lawsuit. (R. p. 316, lines 21-24). The relationship between all members of the Haworth family and Tyler also worsened because of the problems associated with the lease dispute. The relationship became even more hostile when Tyler took a position with a competitor. (R. p. 326, lines 12-24). Another casualty of this move was the marriage of Tyler and Caroline. They separated and divorced in 2017. (R. p. 319, line 1).

Danielson Files a Suit for Damages and Caroline Discovers the Forgery by Tyler and Derek

Danielson initially attached to the original Complaint an executed copy of a residential lease agreement which did not show Caroline's signature. (R. p. 366, lines 17-21) A later version of the lease showing Caroline's admittedly forged signature later appeared during pretrial discovery in this matter.

Post mediation in 2018, Born filed cross claims against Caroline, alleging she was a party to the lease and subject to contractual and equitable indemnification, despite knowledge of its own bad acts described above. Following a trial of the matter, the Court deemed Caroline a party to the lease pursuant to S.C. Code Sec. 27-40-320 due to her moving the children into the house,

not because she negotiated the terms of the lease and signed it. As discussed below, the Trial Court took this information into consideration when it appropriately dismissed Born's claim for equitable indemnification against Caroline.

ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED APPELLANTS FAILED TO PROVE A SPECIAL RELATIONSHIP WITH RESPONDENT SUFFICIENT TO SUPPORT AN EQUITABLE INDEMNITY CLAIM.

a. Appellants have failed to provide credible testimony and facts that establish any special relationship between it and Respondent.

In order to maintain a claim for equitable indemnity, Born must credibly demonstrate that a special relationship existed between it and Caroline. See Toomer v. Norfolk Southern Railway Company, 344 S.C. 486,492-493,544, S.E.2d 634, 637, (Ct. App. 2001).

This special relationship "must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another's wrongdoing." Rock Hill Telephone Co. v. Globe Communications, 363 S.C. 385, 611 S.B.2d 235, fn. 3 (2005). Born alleges the existence of a special relationship with Caroline because of her ostensible reliance on Tyler's income, Born's payment of rent through Tyler's paycheck, the guarantee provided by Born in the lease, and her "regular social interactions" with officers and employees of Born. (App. Br. at p. 6). The Trial Court weighed the credibility offered by conflicting witnesses and correctly determined, based on South Carolina precedent, that these examples are insufficient to support any of these claims.

In the cases where South Carolina courts have recognized a special relationship, the relationship is one where the indemnitor's fault can be imputed to the indemnitee - particularly where the indemnitor is acting as the agent of the indemnitee when the damages to a third person

occur. See, e.g., Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971) (allowing equitable indemnity when a building's landlords were compelled to pay damages to tenants because of a general contractor's negligence); South Carolina Elec. & Gas Co. v. Utilities Const. Co., 244 S.C. 79, 135 S.E.2d 613 (1964) (allowing equitable indemnity where electric company had to pay damages to pedestrian who was injured due to defect in sidewalk repaired by electric company's contractor).

Here, Born has provided no credible testimony or evidence to satisfy the elements of a special relationship. Born's salary and rental payment arrangement were for the benefit of Tyler and Born and the court recognized this relationship of employer and employee in rendering its decision. The Court, however, rightfully refused to over-extend any connection it had with Tyler through his employment to Caroline, as she was merely "the wife of an employee." (R. p. 458, line 24). The testimony also contradicts any allegation that her interactions were numerous or meaningful to rise to the level of special relationship.

Born also attempts to generate a special relationship by arguing Caroline should have known of the guarantee as a party to the lease. Born fails to mention, however, that she was only a party to the lease by virtue of her occupying the residence for two months and never actually knew about or signed the document. There is no evidence in the Record to support the position that Caroline knew or should have known that Born (1) aided and abetted the forging of her name on the lease; (2) required a principal of Born to "witness" the forged document, (3) guaranteed the lease; or (4) would seek indemnification against her personally should she move out as they encouraged.

Born seeks to establish new precedent in South Carolina by finding the existence of a special relationship for equitable indemnification purposes simply and solely because someone is married to one of its employee. While this measure seems extreme in any situation and would hardly engender good familial relationships, to apply it here would stretch the bounds of legal and equitable reason given the relationship claimed is built on a fraudulent act by Born.

b. Appellants have failed to prove facts through credible witness testimony which establish any action by Caroline that allows Born to satisfy the requirements of a special relationship.

"A sufficient relationship exists when the at-fault party's negligence or breach of contract is directed at the non-faulting party and the non-faulting party incurs attorney's fees and costs in defending itself against the other's conduct." Town of Winnsboro v. Wiedeman-Singleton, Inc., 307 S.C. 128, 132, 414 S.E.2d 118, 121 (1992)(emphasis added).

The relationship alleged by Born does not satisfy the South Carolina Supreme Court's standard set forth in Town of Winnsboro. Even taking as true the facts alleged in the Cross Claim, Born has not shown through credible testimony that Caroline's allegedly tortious conduct was directed at Born. In Town of Winnsboro, a subcontractor breached its duty to the general contractor on a sewer project - the poor completion of which was the basis for the town's lawsuit against the general contractor. 307 S.C. at 129–30, 414 S.E.2d at 119. The South Carolina Supreme Court upheld the trial judge's award of equitable indemnity for the general contractor because the subcontractor's breach of its duties toward the general contractor ultimately resulted in the town's harm. Id. at 132, 414 S.E.2d at 120 ("[Subcontractor] negligently performed its contract with [General Contractor]. Because of [Subcontractor's] negligence and breach of

contract directed toward [General Contractor], [General Contractor] was forced to defend the action brought by the Town of Winnsboro.").

In contrast, Born asserts no testimony to prove that any relationship between it and Caroline conferred upon her any duties towards the company. She was only considered a party to the lease through her physical occupation, not by execution of the document to which Born was a party. Thus, even taking the testimony as credible and true, Caroline's alleged acts of negligence were not imputed to Born as required to show a special relationship as she was not a party to nor had any knowledge of Born's guarantee. Therefore, Born cannot demonstrate the required special relationship with Caroline to support its equitable indemnity claim. Thus, the Trial Court correctly dismissed this claim.

c. Credible testimony at trial clearly establishes to the Trial Court's satisfaction that Caroline was not a signatory to the lease, thus justifying different treatment of Tyler and Caroline.

Appellant contends that solely by virtue of being a statutory "party" to the lease, Caroline is obligated to indemnify Born as the Guarantor. The Record clearly demonstrates that Caroline's responsibility, if any, was to Danielson, by virtue of the obligations dictated by the Landlord Tenant Act and her physical occupancy of the residence. Caroline's personal settlement with Danielson is an acknowledgement of this potential obligation. These statutorily created obligations do not extend to Born because they are not a Landlord under the Act and, most importantly because of Born's own bad acts in committing a fraud on the Landlord, engaging one of their owners and employees to falsely witness the Lease, and in abetting the forgery of Caroline's name on the Lease induced Danielson to execute. As the Trial Court clearly stated: "I don't think she was knowingly a party to the lease agreement…under the issue

of equitable indemnification I just don't find that that special relationship exists." (R. p. 462, lines 7-11) Courts have recognized special relationships by virtue of a contractual relationship. See Addy v. Bolton, 257 S.C. 28 (1971). The Trial Court properly determined, on the record, that Caroline was "solely the wife of the employee" and that "in and of itself [did not] constitute a special relationship" between Caroline and Born sufficient to support a claim for equitable indemnity. (R. p. 458, line 24- p. 459, line 2) This holding is appropriate given the weight of the evidence provided by credible witnesses and should be upheld.

d. Born is not an "innocent party" in the context of Equitable Indemnification.

The Trial Court found, incorrectly, as a matter of law that Born was not a cause of Danielson's damages. (R. pp. 20-21) Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999); Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 132 S.E.2d 172 (1963). This; however, is subject to the proviso that no personal negligence of his own has joined in causing the injury. Id.

Credible testimony demonstrates that Danielson would accept no lease without a witnessed signature by Caroline. Time was of the essence for Tyler and Derek. Derek noted no objection when Tyler forged Caroline's signature. Upon request by her brother, Derek, Michelle agreed to witness the forged signature without question. But for Born's willful and inappropriate behavior, no lease would have been executed or accepted by Danielson in 2013. Without Born's

willful and inappropriate behavior, Danielson would have incurred no damages as there would not have been a lease. Thus, Born is not an innocent party entitled to the equitable relief sought.

II. THE TRIAL COURT CORRECTLY DISMISSED BORN'S EQUITABLE INDEMNITY CLAIM AGAINST CAROLINE UNDER THE PRINCIPLES OF EQUITY.

Appellant asserts that the Trial court erred by treating Caroline and Tyler Beauregard differently. "He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." Precision Instrument Mfg. Co. v. Automotive Co., 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945); see also, Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (Ct.App.1984). ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant."). Born does not satisfy this or any equitable maxim in this instance. The doctrine of "unclean hands" precludes a claimant from recovering in equity where the claimant acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. Ingram v. Kasey's Assocs., 328 S.C. 399, 414, 493 S.E.2d 856, 865 (S.C. App. 1997).

The record is replete with credibly stated instances of bad acts by Tyler and members of the Haworth family in the negotiation and execution of this lease. Born was anxious for Tyler to move to South Carolina for the material, lucrative, corporate benefit they anticipated reaping. Tyler needed a residence for his family to accomplish Born's objective. However, Born knew Danielson would not accept the lease without Born's agreement to indemnify and without Caroline's "witnessed" signature. Despite Born's knowledge that Caroline had not signed the

document and that Derek's sister represented to Danielson that she witnessed Caroline's signature, Born knowingly submitted this misleading, fraudulently executed document to Danielson in order to fool him into renting his home to Tyler. These acts were undertaken by Born solely for the purpose of advancing Born's business in South Carolina. The mere fact that Caroline and Tyler were both "parties" to the lease under the Landlord Tenant Act in no way supports Born's right to a judgment against them equally. These parties are not equal. Caroline has endured years of financial and emotional stress due to the bad acts of Born, which now asks this Court for equitable treatment. The undisputed, credible testimony shows the only "innocent party" in the equitable indemnification analysis is Caroline.

Appellant deserves no equitable indemnification from Caroline. Every member of the Haworth family has come to this Court with unclean hands. The Trial Court's differentiation between Caroline and Tyler is a reflection of its careful and appropriate assessment of the credibility of the witnesses at trial and consideration of the facts presented. For this reason, it should be upheld.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Trial Court.

Respectfully submitted,

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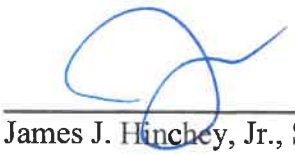
CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Final Brief of Respondent complies with Rule 211(b), SCACR.

Respectfully submitted,



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