

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Oct 16 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston.....Respondent

v.

Harold Simmons Jr.....Appellant

MOTION TO AMEND

Regarding filed Final Brief

I, the Appellant, Harold Simmons, Jr request permission to amend CASE NO. 2014-CP-10-1635 of August 11, 2016 Statement of the Case before submission of the final brief which has been delayed due to the pandemic and death in my family. There is additional information that is vital to the Appellant CASE NO. 2016-001201.

Appellant thanks you for your patience,

Harold Simmons, Jr.

Harold Simmons, Jr.

October 16, 2020

Harold Simmons, Jr., Pro Se
3042 North Carolina Ave.
North Charleston, SC 29405
(843) 480-8694

STATEMENT OF THE CASE

Appellant Harold Simmons Jr. is a disabled businessman of Charleston County.

Respondent Allen Livingston is a businessman of Charleston County.

- 1) On March 11, 2014, the Respondent filed a Lis Pendens concerning a property that was in contract between the Respondent and on April 4, 2014 the Appellant was served. At the time, Appellant had paid Respondent \$92,000.
- 2) On April 24, 2014, the Appellant filed an answer and requested a Jury Trial at the time. The Respondent, Bruce Berlinsky (Respondent's Attorney) and Judge Dennis held an unscheduled hearing on April 28, 2014. This is a violation of Due Process of Law. Appellant was never informed or served by the court about these hearings.
- 3) And on June 4, 2014, Respondent's Attorney filed an affidavit of default. Appellant Harold Simmons had no knowledge about the Affidavit of Default until Respondent Attorney used it for his defense at the August 11, 2016 hearing.
- 4) On June 12, 2014, Appellant filed a counterclaim for years of harassment by Respondent Allen Livingston and his Attorneys.
- 5) On July 16, 2014, a hearing was scheduled to go before Judge Nicholson.
- 6) On July 2, 2014, Appellate Harold Simmons Junior received a letter from Respondent's Attorney Bruce Berlinsky stating a Motion Hearing scheduled for July 16, 2014 before Judge Nicholson is no longer necessary at this time.
- 7) From the first date on or around November 2014 through December 17, 2014, Judge Mikell Scarborough and the court denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the Respondent's legal counsel falsely testified about a hearing and presented documents based on the false Default Hearing and further refused to take in consideration the Respondent's perjury and falsification by forgery of documents in prior court proceedings under Judge Nicholson and the court.

Judge Mikell Scarborough has constantly denied the Appellant several Requests and Demand for a Jury Trial. At the time, the court gave a reason to why Appellant was denied and Appellant Harold Simmons, Jr. did not know about Judge Dennis until the August 11, 2016 hearing. Appellant was denied a Change of Venue and Counterclaim during the entire process and refused to dismiss the Respondent's claim and grant Appellant the counterclaim demand. This Appeal followed: No court has the lawful right to strike a jury trial according to South Carolina Rule of the Court rule 53 and 38. The Appellant is entitled to a jury

trial and no rule exist that states a jury trial can be struck. Their original Judge Nicholson order was not upheld based on the denial of the relief set by Judge Nicholson for the Appellant, so the original agreement of the parties be in effect and advance monthly payments and months be honored. This was not upheld along with the frivolous and mock default hearing held without notifying and serving the appellant. This default hearing on April 28, 2014 by Judge Dennis was unscheduled and it is not on the court record, but the Master-in-Equity Courts decided to utilize it against the Appellant; and as of August 6, 2015, Appellant was ordered by the Courts to pay \$60,212.00 to stop the sale of Appellant's property. At the time, the Appellant only owed \$25,613.42. Because of this the Appellant paid \$34,598.54 over what was owed. The Appellant asks the Appeal Court to be reimbursed the overpayment and attorney fees of \$75,000.00 and a counterclaim of \$600,000.00 for years of harassment done through the Court by the Respondent, Allen Livingston and his attorneys.

- 8) As shown, these are the violations of due process:
- a. Denied seven requests and demand for jury trial
 - b. Denied all motions
 - c. Overlooking Plaintiff (Respondent) perjury
 - d. Denied of counter claim
 - e. Ignored the fact that the case is under appeal
 - f. Continue to move forward with the case in the lower court

Harold Simmons, Jr.

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Statement of the Counterclaim Case

Dear Judge of Appeal Court,

This Request for Compensation for Harass and Harassment and Pain and Suffering comes from years of suffering mental and emotional stress. For starters, back on July 15, 2000, I signed a contract with the Respondent, Allen Livingston, for the property located at 3042 North Carolina Ave., N., Charleston SC 29405. For the first seven years, everything was good. The agreement was for the Appellant Harold Simmons, Jr. to buy the property for \$125,000 at the rate of \$500 a month. So, all through those years I have been making good payments. Many of the times, I doubled or tripled my monthly payment. I did so if something went wrong or if I became sick, I would not fall behind on my payments. So, in the year 2007, the Respondent Alan Livingston decided he wanted out of the contract; he then went as far as filing a lawsuit at the magistrate level trying to use the court to help him break the contract. The first thing the Respondent did was to try to get the court to say that the contract was a rental agreement. The Respondent wanted the court to believe the contract the Respondent submitted was the real contract, and that the contract Appellant Harold Simmons, Jr. presented was an altered contract, but the court ruled that the Appellant's contract is authentic.

1. This lawsuit was filed on 10/2007 at the magistrate level with presiding Judge Stephanie Ganaway (Case number 09-1769). Due to the value of the case, the case was moved to the higher courts.
2. The Court of Common Pleas Ninth Judicial Circuit presiding Judge Thomas L Hughston Jr. in year 6/2008 Case No 2007 - C1 - 67 - 1769 at this point and level. The Respondent and his attorney Jeffrey Barnwell convince Judge Thomas Hughston to do an Ejectment Order.
3. (Charleston County Sheriff's office Ejectment case number 2007 - C1 - 67 - 1769) This action took place before the case was heard. This was done in July 2008, but the Appellant and his attorney Seth S. Whipper was able to have the Ejectment overturned.
4. Now here we are back before the Court of Common Pleas (Case No. 08 - CP - 10 -0270) for a pre-trial before Judge Thomas L Hughston Jr.
5. In August 2008, Appellant Harold Simmons Jr. had to get an Affidavit from the Clerk of Court to show that Appellant was doing what was ordered by the Court. During that time, the Respondent claimed the Appellant was behind in his purchase money or rent by \$7000. From the start Appellant Harold Simmons, Jr. had been paid up in advance. At this time, the Respondent presented and gave the court has Respondent evidence intentionally and falsely showing the address as 3049 North Carolina Ave., the whole front page was re-written and the third page had certain things removed from it.
6. Now the moment of truth, back to the Court of Common Pleas Ninth Judicial Circuit Judge J.C. Nicholson Jr. Case number 2010 - CP - 8027 and year 9/2012. At this time, the court ruled that the Appellant contract is the authentic contract. The Appellant contract is a Purchase Contract and the Appellant is and always had his purchase money paid up; not only paid up but over paid, \$16,040 beyond what was required under the contract.
7. Right before this hearing, Respondent's Attorney Jeffrey A. Barnwell had a discussion with a Appellant Harold Simmons, Jr.'s Attorney Seth S. Whipper stating Respondent would drop his lawsuit for a settlement of \$80,000; but at the time of this request for settlement, Appellant only owed a balance of \$37,000.00
8. Respondent file appeal Case No. 2013- 00 -13 06, May 9, 2013.
9. Right before the filing of the Responding Appeal, Appellant Harold Simmons, Jr. paid Respondent Allen Livingston's Attorney Barnwell \$4500.00 towards the contract, but he never applied the funds.
10. Two months after the Appeal was dismissed, Respondent filed a foreclosure on Appellant stating Appellant did not make any payments at all for the same \$4500.00 foreclosure filed by Allen Livingston's Attorney Bruce Berlinsky. Foreclosure filed March 2014 Case No. 2014 - CP - 10 - 01635 Presiding Judge J.C. Nicholson Court of Common Pleas
11. Attorney Bruce Berlinski did whatever it took to get Appellant in front of Master-in-Equity, Attorney Berlinski lied, stating Appellant did not answer.
12. Appellant has requested a jury trial five times and was denied all requests. A jury trial was requested on April 24, 2014, June 12, 2014, June 6, 2014, July 16, 2014, and June 9, 2016. Hearing before Master-in-Equity Judge Mikell Scarborough in year 12/2014 Case No 2014 - CP - 10 - 01635. Appellant Harold Simmons, Jr. has always been paid up in advance; always \$9000 or more in advance. Every time a case was filed, Appellant Harold Simmons, Jr.

was ahead of his payments but still in some way the court showed bias and prejudice towards the Appellant and favoritism for Respondent Allen Livingston, even though payments were ahead and the Respondent filed forged and altered documents with the Court as his proof, lying under oath in the court every time. These forged documents were filed in Magistrate Court and in the Court of Common Pleas Ninth Judicial Circuit. This time the reason the Court gave is that even though Appellant had paid more money on top of the advance payments, which had made it 21 advance payments towards the month of December 2012 and because Appellant did not make advance payment number 22 for the month of 12/2013. The Master-in-Equity Judge Mikell Scarborough found the Appellant Harold Simmons, Jr. in default for not making advance payment number 22 for the month 12/2013. Judge M. Scarborough is changing Judge Nicholson language in the order even though the third Judge J.C. Nicholson Circuit Judge ruled in favor for Appellant Harold Simmons, Jr. because of the advance payment and court order Judge Nicholson stated "I am ordering that the transaction be carried out as agreed-upon", J.C. Nicholson's February 27, 2013 order. However, the fourth judge in Master-in-Equity Judge M. Scarborough is ruling to overturn Circuit Court Judge Nicholson. Judge Scarborough is the Judge who denied Appellant's requests for jury trials, which are Appellant's rights by Rules 39 and 53 of South Carolina Rules of the Court.

The property in question is where Appellant Harold Simmons, Jr. operates his auto repair business. This frivolous lawsuit interfered with his livelihood and future.

Appellant Harold Simmons, Jr. is asking the Judge of the Court of Appeals for ruling in Appellant's favor because he was never behind in payments and at the time only owed a balance of \$25,613.42 of the \$125,000.00 original agreed upon contract between Appellant and the Respondent. Only four more years of payments of \$500 a month were owed. The last two payments were made on 4/2/2018 for \$824.36 and 6/1/2018 for \$105.

Supporting Case Opinion No. 25510, citing the Court's opinion Lewis V. Premium Investment Corporation, the majority noted that typically in this type of contract, the seller retains legal title until the purchase price has been fully paid, and the purchaser is entitled to immediate possession. *Id A1419, 635S. E. 2dAt560, see Lewis V. Premium Investment Corporation, 351S. C. 157, 170-73, 568S. E. 2d361, 363-64(2002) (Stating that in an installment and contract, the seller retains legal title until the purchase price is fully paid and that the vendee is in possession of the land is the owner of an equitable interest in the property.)

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PROOF OF SERVICE

I, Harold Simmons JR., Pro Se, hereby certify that I have served the Motion to Amend on Allen Livingston by depositing a copy of it in the United States Main, on October 16, 2020, addressed to his attorney of record, Bruce A. Berlinsky, P.A., One Carriage Lane Bldg. F, Charleston, SC 29407.

Harold Simmons, Jr.

October 16, 2020

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