

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
ANJAY PATEL,)
)
Plaintiff,)
)
v.)
)
BHAVESH PATEL and JOHN DOE,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C/A No. 2019-CP-42-04122

ORDER GRANTING DEFENDANT BHAVESH PATEL'S MOTION FOR SUMMARY JUDGMENT; and ORDER DENYING DEFENDANT BHAVESH PATEL'S MOTION TO DISMISS DEFENDANT JOHN DOE

RECEIVED

Oct 15 2020

SC Court of Appeals

TRIAL JUDGE:
COURT REPORTER:
PLAINTIFF'S ATTORNEY:
DEFENDANT PATEL'S ATTORNEYS:
DEFENDANT JOHN DOE:
DATE OF HEARING:

HON. R. KEITH KELLY
JULIE A. CENDROSKI / WEBEX
JOHN C. STRICKLAND
BILLY J. GARRETT, JR., and
CARSON M. HENDERSON
NOT PRESENT
WEDNESDAY, AUGUST 19, 2020

This matter came before the Court on a Motion for Summary Judgment filed by the Defendant Bavesh Patel pursuant to Rule 56 of the S.C. Rules of Civil Procedure, as well as the Defendant Patel's Motion to Dismiss Defendant John Doe. A WebEx hearing was held at 2:00 p.m. on Wednesday, August 19, 2020. Present at the hearing were John C. Strickland, the Plaintiff's attorney; Billy J. Garrett, Jr., and Carson M. Henderson, the Defendant Patel's attorneys; and the Defendant Patel. The Defendant John Doe didn't appear, nor was he/she represented by an attorney.

For the reasons set forth herein below, the Court hereby grants the Defendant Patel's Motion for Summary Judgment and denies the Defendant Patel's Motion to Dismiss.

STATEMENT OF FACTS

In 2009, Anjay Patel (hereinafter "Anjay") and Bhavesh Patel (hereinafter "Bhavesh") formed Sia Investments, LLC (hereinafter "Sia") for the purpose of owning, operating, managing, and leasing real property and convenience stores. By 2011, Sia owned or leased interests in five (5) properties and was leasing or subleasing them all to tenants and collecting rental income.

In 2011, a Federal Grand Jury indicted Anjay for conspiracy to traffic in contraband cigarettes, conspiracy to commit money laundering, trafficking in contraband cigarettes, and money laundering. A Federal Magistrate Judge issued a Protective Order on October 26, 2011, in the criminal action against Anjay. In the Protective Order, Anjay was restrained, prohibited, and enjoined from attempting, completing, or causing any action or transaction that would affect the marketability, value, or availability of all assets, inventory, and property related to Sia.

Acting on behalf of Sia, Bhavesh entered into multiple agreements with the United States after Sia had been seized. The agreements provided that Bhavesh, and nobody else, could continue operating the business of Sia, but such operation was subject to the supervision of and restrictions imposed by the federal government.

In February 2013, Anjay pled guilty to conspiracy to distribute contraband cigarettes, conspiracy to commit money laundering, trafficking in contraband cigarettes, promotional money laundering, concealment money laundering, and engaging in monetary transactions involving more than \$10,000.00 in criminal proceeds. Anjay was sentenced to eighty-four (84) months incarceration, two (2) years of supervised release, and ordered to forfeit substantial assets.

On August 29, 2013, the U.S. District Court entered a Preliminary Order of Forfeiture as to certain assets. The Court entered an Amended Order of Forfeiture on December 6, 2013. Pursuant to the Orders of Forfeiture, the following property was forfeited to the United States of America: the entity known as Sia Investments, LLC, and all assets, including (a) \$12,648.69 in

U.S. currency; (b) 401 North Main Street, Saluda, S.C. 29318; (c) 401 Town Center North, McCormick, S.C. 29835; (d) 200 Hammett Street, Greenville, S.C. 29609; (e) 699 Arlington Road, Greer, S.C. 29651; and (f) 2207 Racing Road, Greer, S.C. 29651.

In May 2014, the United States and Sia entered into a written Settlement Agreement. In accordance with the agreement, Bhavesh personally remitted payment of \$136,000.00 to the United States made payable to the U.S. Department of Justice for forfeiture in lieu of its interest in Sia and all of its assets.

On June 24, 2014, the U.S. District Court entered a Second Final Order of Forfeiture, wherein all right, title, and interest in the following described property was forfeited and title vested in the United States of America: (a) \$12,648.69 in U.S. currency; (b) 401 North Main Street, Saluda, S.C. 29318; (c) 401 Town Center North, McCormick, S.C. 29835; (d) 200 Hammett Street, Greenville, S.C. 29609; (e) 699 Arlington Road, Greer, S.C. 29651; and (f) 2207 Racing Road, Greer, S.C. 29651. However, pursuant to the terms of the aforementioned settlement agreement, the United States agreed to accept the sum of \$136,000.00 from Bhavesh for its forfeited interest in the assets set forth above.

Anjay consented to the forfeiture by the federal government. He didn't ask the U.S. District Court to reconsider its Final Order, and Anjay didn't appeal the Final Order. The Final Forfeiture Order is the law of the federal case and extinguished any interest that Anjay had in Sia.

In September 2015, Bhavesh, as the sole member of Sia, transferred the assets of Sia to the Defendant Bholenath Investments, LLC (hereinafter "Bholenath"), dissolved Sia, and filed Articles of Termination for Sia with the S.C. Secretary of State.

FIRST SPARTANBURG ACTION

On April 8, 2016, Anjay filed the first case against Sia and Bhavesh, alleging the following causes of action: (1) declaratory judgment, (2) conversion, (3) accounting, (4) appointment of a

receiver, (5) constructive trust, (6) breach of fiduciary duty, and (7) appoint a receiver. See Spartanburg C/A No. 2016-CP-42-1276.

On June 22, 2017, the Honorable R. Keith Kelly granted Summary Judgment in favor of Bhavesh and Sia and against Anjay. Judge Kelly's Order was filed on June 26, 2017. Anjay was served with a copy of Judge Kelly's Order, and he didn't appeal the Order or otherwise ask Judge Kelly to reconsider the Order. The aforesaid Order is the law of that case.

SECOND SPARTANBURG, FIRST GREENVILLE, AND FIRST SALUDA ACTIONS

On December 12, 2016, Anjay filed a case in Saluda County Court of Common Pleas against Sia and Bholenath alleging the following causes of action: (1) quiet title and (2) alter ego. See Saluda C/A No. 2016-CP-41-273.

At or about the same time, Anjay also filed actions in the Spartanburg County Court of Common Pleas and the Greenville County Court of Common Pleas against Sia and Bholenath alleging the same causes of action. See Spartanburg C/A No. 2016-CP-42-4449 and Greenville C/A No. 2016-CP-23-07347.

Circuit Judge Deandrea G. Benjamin granted summary judgment in favor of the Defendants in the Saluda case, Circuit Judge Grace G. Knie granted summary judgment in favor of the Defendants in the Spartanburg case, and Circuit Judge Edward W. Miller granted summary judgment in favor of the Defendants in the Greenville case.

Anjay was served with a copy of these Orders, and he didn't appeal the Orders or otherwise ask the Circuit Judges to reconsider their Orders. The aforesaid Orders are the law of those cases.

CURRENT ACTION

The current action alleges the following causes of action: (1) breach of the duty of good faith and faith dealing; (2) breach of duty of care to LLC and its member; (3) breach of duty of loyalty; (4) breach of fiduciary duty; and (5) quantum meruit. The current action, as well as

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Anjay's four (4) prior common pleas actions, involves the same Plaintiff. The current action and the first Spartanburg action involve Bhavesh as a Defendant, and also involve Bhavesh being sued for breach of fiduciary duty. In various actions, Anjay also sued Sia and Bholenath, which were or are owned by Bhavesh. In short, Anjay has filed five (5) lawsuits seeking to recover money that he is allegedly owed because of his former ownership interest in Sia. However, Anjay forfeited all right, title, and interest in Sia to the United States by the Second Final Order of Forfeiture dated June 24, 2014.

STANDARD OF REVIEW

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003); Rule 56(c), SCRC. The purpose of summary judgment is to obviate delay where there is no genuine issue as to any material fact. *See Hammond v. Scott*, 268 S.C. 137, 232 S.E.2d 336 (1977).

“Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *Café Assoc., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). Since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *See Helena Chemical v. Allianz Underwriters*, 357 S.C. 631, 594 S.E.2d 455 (2004).

Summary judgment is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute. *CEL Prods., LLC v. Rozelle*, 357 S.C. 125 (Ct. App. 2004). In determining whether summary judgment is proper, this Court must view all evidence in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country*

Club, 344 S.C. 280 (Ct. App. 2001). Importantly, in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hutchinson v. Liberty Life Ins. Co.*, 393 S.C. 19, 24 (Ct. App. 2011).

DISCUSSION

At the motion hearing, the Defendant Patel’s attorneys asked the Court to take judicial notice of the final federal court Order and the state court Orders. The Defendant Patel argued that Anjay lacked standing to bring the claims in this case because his ownership interest in Sia was extinguished by the U.S. District Court, Anjay didn’t appeal the final federal court Forfeiture Order, Anjay no longer has any interest in Sia, four (4) Circuit Court judges previously granted summary judgment against Anjay, and Anjay didn’t appeal the Circuit Court Orders. The Defendant Patel also argued the defenses of failure to state facts sufficient to constitute a cause of action, statute of limitations, res judicata, and collateral estoppel.

Anjay had no interest in the actions taken by Bhavesh regarding Sia after Anjay’s interest in Sia was forfeited to the federal government, with the Final Forfeiture Order being issued on June 24, 2014. Bhavesh bought Anjay’s interest in Sia from the federal government, and this purchase money was used to offset the money that Anjay owed to the federal government as a result of his criminal activity.

It is well settled law in South Carolina that “[s]tanding is a fundamental requirement for instituting an action.” *Brock v. Brock*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct. App. 1994). For a plaintiff to possess standing, he must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *Sea Pines Ass’n for the Prot. of Wildlife v. S.C. Dep’t of Natural Res.*, 345 S.C. 594, 600-01, 550 S.E.2d 287, 291-92

(2001). Once it is determined a Plaintiff has no standing to prosecute, the Court must dismiss the action. *Brock*, 443 S.E.2d at 413.

This lawsuit was filed on November 20, 2019, well more than three (3) years after Anjay had actual knowledge that his interest in Sia was finally forfeited to the federal government. In fact, Anjay consented to the forfeiture. Also, the allegations raised in this Complaint are variations of the same allegations raised by Anjay in his four (4) prior state court lawsuits, all of which were dismissed by summary judgment against Anjay.

Anjay has no legally protected interest in Sia, and therefore these claims must be dismissed as a matter of law because Anjay lacks standing to prosecute such claims. The Court hereby grants the Defendant Patel's Motion for Summary Judgment as there is no justifiable controversy presented in this case due to Anjay's lack of standing.

The Court hereby denies the Defendant Patel's Motion to Dismiss the Defendant John Doe from this case. Bhavesh's attorneys don't represent John Doe. Anjay is free to continue his litigation against John Doe.

CONCLUSION

As to this case and for the same reasons set forth herein above, Anjay has no legally protected interest in Sia or what Bhavesh did regarding Sia after Anjay's interest was forfeited to the federal government, and therefore Anjay's claims must be dismissed as a matter of law. Anjay lacks standing to prosecute such claims. The Court grants the Defendant Patel's Motion for Summary Judgment as there is no justiciable controversy presented in this case due to Anjay's lack of standing.

The Court denies the Defendant Patel's Motion to Dismiss the Defendant John Doe from this lawsuit.

IT IS SO ORDERED.

(Electronic Signature to follow)



Spartanburg Common Pleas

Case Caption: Anjay Patel VS Bhavesh Patel , defendant, et al
Case Number: 2019CP4204122
Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165