

REPLY BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

Case No. 2017-CP-04-02099
Appellate Case No. 2020-000421.

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Nov 30 2020
SC Court of Appeals

John Harbin,

Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.,
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe,

Respondents,

**REPLY BRIEF OF APPELLANT
TO RESPONDENTS HUB ENTERPRISES AND SHAWN CONWAY**

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STATEMENT OF ISSUES

- I. WHETHER THE APPEAL AGAINST HUB AND CONWAY WAS TIMELY FILED.**

- II. WHETHER THE TRIAL COURT PROPERLY DISMISSED APPELLANT’S COMPLAINT.**

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief. This appeal is brought pursuant to the dismissal by the trial court of Appellant’s Complaint against HUB and Conway. Appellant timely filed his Notice of Appeal and filed his Initial Brief on December 18, 2020. Respondent filed its Initial Brief on June 25, 2020.

ARGUMENTS

I.

THE APPEAL AGAINST HUB AND CONWAY IS TIMELY FILED.

Rule 203 of the South Carolina Appellate Court Rules (SCACR) provides:

(1) Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCR), motion to alter or amend the judgment (Rules 52 and 59, SCRCR), or a motion for a new trial (Rule 59, SCRCR) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment. Rule 203 (a)(1) of the SCAR.

Based on the aforesaid provision, Appellant believes his case against HUB and Conway was intricately intertwined with the issues he raised against Gallivan White & Boyd, and as such a more complete order or judgment does not entail until a final judgment was made against the

Respondent Law Firm. For this reason, since the final judgment in favor of GWB was issued on February 3, 2020, Appellant has perfected his appeal against both Respondents when he filed his notice of appeal on March 3, 2020.

II.

THE TRIAL COURT IMPROPERLY DISMISSED APPELLANT'S COMPLAINT.

A. The arguments raised in Harbin's Initial Brief were properly preserved for appeal.

Appellant avers in discussing extrinsic fraud in his Initial Brief, he did not raise an independent issue for determination of this Court but as the result of each and every Respondents' independent acts of interference with Appellant's contract with his counsel. In other words, while he did not mention the term "extrinsic fraud" in any of his pleadings pertaining to HUB and Conway, Appellant has cited specific acts of HUB and Conway that were considered extrinsic fraud.

In the Amended Complaint, Appellant alleged that HUB and Conway were hired surreptitiously by GWB and Nikopoulos "to observe any permanent damages that may have resulted to him following the accident". (Amended Summons and Complaint, p. 5). They were hired after Appellant's deposition and without informing to Appellant. Without any report of the investigation and/or surveillance conducted upon Appellant, GWB presented HUB and Conway's services as additional expenses for the Purpose of Collecting Costs as a Result of Offer of Judgment. Clearly, this was part of the general scheme by GWB and Blair to deny Appellant of his right to be compensated for the damages incurred due to the Blair's manipulation of Dunn.

In the Amended Complaint, Appellant alleged HUB and Conway misrepresented their services as follows:

53. Conway attested to the fact that he never saw Harbin, despite the fact that Harbin and his girlfriend had not been away from home overnight in the prior year.
54. Harbin and his girlfriend signed affidavits indicating that they were at the home, the same residence that he offered in the aforementioned deposition, all three (3) days.
55. Conway never offered anything to substantiate that he did any work on the Harbin case, other than his conclusory statement that he didn't see him.

(Amended Summons and Complaint, p. 6).

77. Conway signed an affidavit which attested to the fact that he had provided surveillance on Harbin, on behalf of Blair, but had *never seen him*, and, therefore, he is responsible as an individual for interfering with Plaintiff's contract.
78. HUB Enterprises, Inc. was retained by Gallivan, White & Boyd to provide surveillance on John Harbin for the underlying tort action brought by Harbin and, therefore, it is responsible for the conduct of Conway pursuant to *respondeat superior*, and, therefore, it is responsible for interfering with Plaintiff's contract.

(*Id.*, p. 8)

By HUB and Conway's actions of submitting documents and report that were either fabricated or manipulated and uncorroborated, they have contravened in Plaintiff's contractual relationship with his counsel.

Thus, having been raised to and ruled upon by the trial judge, the unethical conduct of Respondents, which can be characterized as extrinsic fraud is an issue that has been preserved for appeal. Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995).

A. Appellant's claim of Tortious Interference with Contract was sufficiently pled and presented.

Appellant submits the trial court judge erred in finding Appellant failed to satisfy the requisite elements for an action for Tortious Interference by HUB and Conway.

Under South Carolina law, the elements of a cause of action for tortious interference with contract are: (1) the existence of a valid contract; (2) the other party's knowledge of the contract;

(3) the other party's intentional procurement of a breach of the contract; (4) the absence of justification; and (5) resulting damage. Webb v. Elrod, 418 S.E.2d 559, 561 (S.C. Ct. App. 1992).

Plaintiff submits that all these elements are present in the instant case.

It is undisputable that Appellant employed the legal services of the undersigned counsel to bring a tort action against Blair and Dunn. There was no dispute that a valid contract of services existed and still exists between Appellant and his counsel. HUB Enterprise and Conway admitted and recognized the existence of such contract in their Memorandum in Support of their Motion to Dismiss, dated December 6, 2017

Appellant believes HUB and Conway knowingly, willfully, and deliberately, submitted questionable videos and fabricated written report, to facilitate Blair's demand to collect costs from Appellant. In support of his claim, Appellant submitted an Affidavit from Michael Moske, an independent private detective. Moske reviewed the videos and report written by Conway and HUB. He stated that, in his professional capacity, he believed that the videos have been altered as the creation date cannot be found through the use of metadata retrieval application. (Exhibit 1 Affidavit-Michael Moske in Response to HUB Opposition to Plaintiff's Motion to Reconsider,).

Appellant also submitted an Affidavit from Sherry Hayes, who swore she had never talked to Conway, contrary to the latter's claim in his Affidavit. (Exhibit D- Affidavit of Sherry Hayes in Reply to Opposition to HUB and Conway's Motion to Dismiss).

Hub and Conway failed to present any justification for submitting fabricated evidence and allowed GWB to submit the documents in the trial court. Irrefutably, submitting a manufactured evidence was an intentional act that breached the attorney-client contract between Appellant and his counsel.

Appellant seeks this Court to look beyond the narrow concept of breach and to focus on the result effected by the acts of the Respondents. By presenting falsified evidence (videos, report and Affidavit), HUB and Conway assisted Blair in not only claiming a baseless reimbursement, but also deprived Appellant of the economic advantage that may be derived from the attorney-client contract. Respondents' intentional act created a gap in the contract between Appellant and his counsel because it made it difficult for the latter to present his case.

Appellant submits the law does not require an actual separation or severance of attorney-client relationship to claim tortious interference with a contract. The Restatement (Third) of Torts, §§ 16-17, sets out the elements of the intentional interference with a contract.¹

In this case, HUB and Conway caused a breach of contract between Appellant and his counsel when by her conduct, she deprived and/disrupted Appellant's counsel from performing his professional duties to his client. HUB and Conway's action resulted in depriving Appellant of the compensation for damages he suffered and prevented his counsel from performing his duties from recovering the associated attorney fees therewith.

In sum, Appellant has sufficiently established the requisite elements of the claim for tortious interference with contract.

CONCLUSION

¹ (Restatement (Third) of Torts: Liability for Economic Harm § 16).

(1) A defendant is subject to liability for interference with contract if:

- (a) a valid contract existed between the plaintiff and a third party;
- (b) the defendant engaged in wrongful conduct as defined in Subsection (2);
- (c) the defendant intended to cause a breach of the plaintiff's contract or disruption of its performance; and
- (d) the defendant's wrongful conduct caused a breach of the contract or disruption of performance.

(2) Conduct is wrongful for purposes of this Section if:

- (a) the defendant acted for the purpose of appropriating the benefits of the plaintiff's contract; or
- (b) the defendant's conduct constituted an independent and intentional legal wrong; or
- (c) the defendant engaged in the conduct for the sole purpose of injuring the plaintiff.

Based on the foregoing, in addition to the arguments made in the Initial Brief, Appellant respectfully requests this Honorable Court to grant Appellant's appeal, to reverse and vacate the decision of the circuit court and order a remand and trial of this case by Appellant's peers.

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