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SC Court of Appeals

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.)

Harold Simmons, Jr.

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