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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2020-001472
2019-CP-30-00140

Vidhyaben R. Patel, Individually and as Co-Personal
Representative of the Estate of Rameshchanda Prabhudas
Patel, and Darshak Kumar Patel, Individually and as
Co-Personal Representative of the Estate of
Rameshchanda Prabhudas Patel, Appellants/Respondents

v.

Hardik R. Patel, Anal H. Patel and AAHARVID, LLC, Respondents/Appellants

APPELLANTS/RESPONDENTS' INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE COURT ERR IN DENYING THE RESPONDENTS/APPELLANTS' MOTION FOR ATTORNEY'S FEES AND COSTS?**

STATEMENT OF THE CASE

The facts of this case are set out in great detail in the Appellants/Respondents' Brief previously filed with this Court (and consolidated with this Appeal) and will not be repeated/set forth in great detail herein. However, Vidhyaben R. Patel, individually, and as Co-Personal Representative of the Estate of Rameshchandra ("Ramesh") Patel, and Darshak Kumar Patel, Individually and as Co-Personal Representative of the Estate of Rameshchandra Prabhudas Patel, ("Appellants/Respondents") commenced this action by the filing of a Summons and Complaint on February 21, 2019. (Complaint. R. ____). Appellants/Respondents' Complaint sought recovery against Respondents/Appellants for causes of action including the establishment of a constructive and/or resulting trust over certain pieces of property located in Laurens County, South Carolina. Appellants/Respondents' Complaint sought a finding that the Estate of Ramesh and Vidhya each owned a 50% beneficial ownership in a convenience store located at 19278 Highway 72 East in Clinton, South Carolina, as well as other assets, including funds being held in escrow in Florence, South Carolina.

Although Respondents/Appellants filed responsive pleadings, and asserted counterclaims, at no time did they pursue a court order to dismiss any of the allegations set forth in the Appellants/Respondents' Complaint. At no time during the discovery phase of the case did Respondents/Appellants move to dismiss any of the allegations contained in the Complaint. Respondents/Appellants never moved for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The parties engaged in discovery and the case proceeded to trial on the merits.

This matter was tried non-jury before The Honorable Eugene C. Griffith, Jr. for four days, February 6-7, 2020, and June 16-17, 2020. In a highly and sometimes bitterly contested

proceeding, Appellants/Respondents' counsel called both individual Respondents/Appellants as witnesses. Both individual Appellants/Respondents testified under direct exam and under cross examination by Defendants' counsel. Each side called numerous witnesses who were not parties to the case and introduced documents as exhibits during the trial of the case.

At the close of the Appellants/Respondents' case, Respondents/Appellants by and through their counsel made numerous motions. These included Motions for a Directed Verdict as to all of the Appellants/Respondents' causes of action, (Transcript of Record, Vol. 2, Page 92, Lines 22 – Page 126; Line 17; R. _____). Respondents/Appellants' counsel went through each of the causes of action contained in Appellants/Respondents' Complaint. (Transcript of Record, Vol. 2, Page 92, Line 22 – Page 93, Line 2; R. ____).

After hearing argument of counsel, the Court in granted the Respondents/Appellants' motion as to Appellants/Respondents' First Cause of Action, but denied the Respondents/Appellants' motions as to Constructive Trust, Resulting Trust and Breach of Fiduciary Relationship and allowed those causes of action to go forward. (Transcript of Record, Vol. 2, Page 107, Lines 11-12; R. ____) (Transcript of Record, Vo. 2, Page 113, Line 23 – Page 114, Line 13; R. ____).

After completion of the four day trial, Judge Griffith requested each party to submit a proposed order for consideration. (Proposed Order of Appellants/Respondents; R. ____) (Proposed Order of Respondents/Appellants; R. ____). On August 28, 2020, Judge Griffith issued his order granting judgment to Respondents/Appellants. The Court's Order provided, in pertinent part:

107. There is conflicting testimony and evidence regarding whether or not the house or the store was intended to belong in whole or in part to Vidhya. The testimony of the Defendants outweighs the testimony of the Plaintiffs on this issue.

108. There is conflicting testimony and evidence regarding whether the house or the store was to belong, in whole or in part to Ramesh. The testimony of the defendants outweighs the testimony of the Plaintiffs on this issue.

Judge Griffith's order concluded that the Appellants/Respondents were not entitled to the imposition of a constructive or resulting trust over the house or the convenience store. Judge Griffith entered judgment in favor of Defendants. Judge Griffith denied Appellants/Respondents' Motion for Reconsideration and that order is on appeal before this Court.

Respondents/Appellants subsequently moved before Judge Griffith for attorney's fees and costs incurred in accordance to the South Carolina Frivolous Proceedings Act, South Carolina Code Annotated Section 15-36-10, *et. seq.* ("FCPSA" or "The Act"). On January 19, 2021, Judge Griffith issued his order denying Respondents/Appellants' motion. Judge Griffith based his order on the fact that, "...the case contained highly contested facts presented at trial, the complexity of the legal issues, the complexity of the family dynamics, and the credibility and lack of credibility of both plaintiff's and defendant's testimony." (Order of the Honorable Eugene C. Griffith, Jr. dated January 19, 2021; R. ____). Judge Griffith noted, "...factually the case was very close on weight, but...the defendant's testimony and evidence outweighed (but not substantially), the plaintiff's testimony and evidence." (Order of the Honorable Eugene C. Griffith, Jr., dated January 19, 2021; R. ____). Judge Griffith concluded that none of the definitions of a frivolous lawsuit were present in this case and that the attorneys for Appellants/Respondents had reasonable beliefs that the claims alleged were valid under the laws of South Carolina. Judge Griffith further concluded that, "the failure to meet one's burden of proof does not make the complaint filed by the parties frivolous." (Order of the Honorable Eugene C. Griffith, Jr., dated January 19, 2021; R. ____). Respondents/Appellants appealed Judge Griffith's January 19, 2021 order. Respondents/Appellants' appeal was consolidated with Appellants/Respondents' appeal of the

order granting judgment to Respondents/Appellants.

STANDARD OF REVIEW

The determination of whether or not a party is entitled to relief under the South Carolina Frivolous Proceedings Act is treated as one in equity. *In re Beard*, 359 S.C. 351, 597 S.E.2d. 835 (Ct. App. 2004). In an action in equity tried by a judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. “However the abuse of discretion standard plays a role in the appellate review of a sanctions award.” *Ex Parte Gregory*, 378 S.C. 430, 663 S.E.2d. 46 (2008). Where the appellate court agrees with the trial court’s findings of fact, it reviews the decision to award sanctions under an abuse of discretion standard. Under the abuse of discretion standard, the imposition of sanctions will not be disturbed unless the decision is controlled by an error of law or is based on unsupported factual conclusions. *Southeastern Site Prep, LLC v. Atlantic Coast Builders*, 394 S.C. 97, 713 S.E.2d. 650 (Ct. App. 2011). A trial court's decision to award or deny sanctions will not be disturbed absent a clear abuse of discretion. *Culbertson v. Clemens*, 322 S.C. 20, 24, 471 S.E.2d 163, 165 (1996).

ARGUMENT

The Trial Court did not abuse its discretion or err in denying the Respondents/Appellants’ Motion for Sanctions. As set forth in the Appellants/Respondents’ Brief in the underlying appeal, the Respondents/Appellants assert that they were entitled to judgment in the underlying case which would make any determination of entitlement to fees and costs under the Act in this Appeal moot. However, even if the Court were to affirm the underlying order, Respondents/Appellants would still not be entitled to an award of fees and costs under the Act.

I. THE TRIAL COURT DID NOT ERR IN FAILING TO GRANT RELIEF TO RESPONDENTS/APPELLANTS UNDER THE SOUTH CAROLINA FRIVOLOUS PROCEEDINGS ACT

Even though they specifically acknowledge that, "...the Trial Judge's decision on the merits of attorney's fees and costs might have been the same despite Appellant/Respondent's default..." Respondents/Appellants devote much of their Brief to their argument that Appellants failed to timely respond to their motion for fees and costs and that this somehow entitled them to the requested relief under the Act as a matter of law. Respondents/Appellants attempt to create and impose a "statutory deadline" that would entitle them to relief under the Act as a matter of law due to the alleged insufficiency of the Appellants/Respondents' response to the Respondents/Appellants' motion. This argument is based on a misreading of the Statute.

First the statute does not contain a statutory deadline to respond to Respondents/Appellants' motion that would result in a moving party being granted the sought for relief if the non-moving party filed no response. South Carolina Code Section 15-36-10, provides that at the conclusion of a proceeding upon motion of the prevailing party, the court, "shall proceed to determine if the claim or defense was frivolous." The Act then sets forth grounds upon which an attorney, party or pro se litigant shall be sanctioned for a frivolous claim or defense. The Act provides that a person is entitled to notice and an opportunity to respond before the presiding judge rules on whether or not the moving party is entitled to fees or costs under the provisions of the Act. The Act provides that upon notification that a party is moving for sanctions pursuant to the Act, the non-moving party has thirty (30) days to respond to the allegations, "as that person considers appropriate." Nowhere in the Act does the Act provide in the event that a response is not made, the moving party is entitled to the requested relief as a matter of law. Respondents/Appellants are reading into the Act a provision that is simply not there. As set forth below, the

Appellants/Respondents did respond to the Respondents/Appellants' motion. But even if they had not done so, Respondents/Appellants would not have been entitled to the requested relief "as a matter of law" without the Court making a determination of whether they were, in fact, entitled to the requested relief under the Act.

The South Carolina Frivolous Civil Proceedings Sanctions Act is penal in nature. It is designed to serve as a penalty or punishment for certain actions. Penal statutes must be strictly construed by the Courts. *Dykeman v. Wells Fargo Home Mortgage, Inc.*, 381 S.C. 333, 673 S.E. 2d. 804 (2009). In addition, South Carolina Courts interpret statutes that grant power to award attorney's fees narrowly because these laws were enacted in derogation of the common law. *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C.171, 557 S.E. 2d. 708 (Ct. App. 2001); *Dowaliby v. Chambliss*, 344 S.C. 558, 544 S.E.2d. 646 (Ct. App. 2001).

Respondents/Appellants argue that because the Appellants/Respondents did not respond to their motion within thirty (30) days, the Respondents/Appellants are entitled to an award under the Act as a matter of law. First, the Appellants/Respondents did in fact file a Memorandum in Opposition to the Respondents/Appellants' motion. There is nothing under the Act that prohibited Judge Griffith from requested a memorandum from the Appellants/Respondents' prior to issuing his order. Again, Respondents/Appellants are attempting to put a prohibition in the statute that simply is not there.

Secondly, even if the Appellants/Respondents' Memorandum in Opposition was somehow untimely or improper (which Appellants/Respondents deny), this did not entitle the Respondents/Appellants to the requested relief under the Act as a matter of law. There is nothing in the Act that provides that a party who fails to respond to a motion for sanctions is in "default" and that failure to respond provides that the moving party is entitled to the requested relief as a

matter of law. Even if a party does not respond to a motion for sanctions under the Act, there is nothing in the statute that provides that failure to respond entitles the moving party to the requested relief. Even if a party fails to respond to a motion made under the Act, the Court still must determine whether or not the moving party is entitled to the requested relief, using the factors set forth under the Act. In this case, Judge Griffith, who heard the underlying case, determined and ruled that Respondents/Appellants were not entitled to an award under the Act. Although Appellants/Respondents take issue with Judge Griffith's initial order, his order denying Respondents/Appellants relief under the Act should be affirmed by this Court.

The Trial Judge's order denying the relief sought by Respondents/Appellants under the Act was not clearly erroneous and should be affirmed by the Court. The South Carolina Frivolous Civil Proceedings Act, South Carolina Code Section 15-36-10 sets forth the criteria under which the Court may award sanctions to a prevailing or moving party in a legal proceeding. In order to recover for attorney's fees under the Act, South Carolina Code Section 15-36-10 (A)(4) provides that an attorney or pro se litigant participating in a civil action may be sanctioned for:

- (a) Filing a frivolous pleading, motion or document if:
 - i. the person has not read the frivolous pleading, motion or document;
 - ii. a reasonable attorney under the same or similar circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification or reversal of existing law;
 - iii. a reasonable attorney presented with the same circumstances would believe that a procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party;
 - iv. a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceeding is based;

- (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported the facts; or
- (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification or reversal of existing law.

Similarly, at the conclusion of trial, upon motion of the prevailing party, the Court shall proceed to determine if the claim or defense was frivolous. An attorney, party or pro se litigant shall be sanctioned if the Court finds that the attorney, party or pro se litigant failed to comply with one or more of the following conditions:

- a. a reasonable attorney under the same or similar circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification or reversal of existing law;
- b. a reasonable attorney presented with the same circumstances would believe that a procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
- c. a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceeding is based.

Unless the Court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party or pro se litigant shall not be sanctioned. South Carolina Code Section 15-36-10(C)(2); See also, *In re Beard*, 359 S.C. 351, 597 S.E.2d. 835 (Ct. App. 2004).

II. APPELLANTS/RESPONDENTS' SUIT WAS NOT BROUGHT FOR AN IMPROPER PURPOSE

The Trial Court's order denying Respondents/Appellants' motion for attorney's fees against Appellants/Respondents is not clearly erroneous and should be affirmed by the Court. None of the factors required by the Act to impose an award of sanctions were present in this case.

Respondents/Appellants first asserted in their motion that they are entitled to attorney's fees and costs because a reasonable attorney in the same circumstances would believe that the procurement, initiation, continuation, or defense of this suit was intended merely to harass Respondents/Appellants, particularly Hardik Patel. In support of their motion, the Respondents/Appellants argue that the case was instituted by Appellant/Respondent Vidhya Patel either because her son Hardik would not speak to her or she was left nothing by her husband, Ramesh when he died. Respondents/Appellants also argue that Appellants/Respondents' case was based on a number of untruthful allegations contained in Appellants/Respondents' Complaint.

In support of their argument regarding the motive behind her suit, Respondents/Appellants rely in a large part on the deposition testimony of Vidhya Patel. It should be noted that Vidhya was born and grew up in India. As she testified in trial, she had a very limited education there. English is not her first language and it does not come easy to her as the Court had opportunity to observe when she testified at trial under both lengthy direct and cross examination. While Vidhya may have had difficulty articulating her responses to certain questions raised to her in her deposition, the Court had ample opportunity to hear her responses posed to her by counsel as to her motivation in bringing this lawsuit.

Even in the deposition relied upon by Respondents/Appellants, it should be noted that in the cited paragraph Vidhya testified, "...he change the name of **my store**, his name." (Emphasis added). Again, it should be noted that after this deposition, Respondents/Appellants made no effort to move for summary judgment as to any of the allegations contained in the Appellants/Respondents' Complaint. Further, Vidhya had the opportunity to clear up and clarify any deposition testimony at trial regarding her belief as to the correct ownership of the residence and store. This testimony was supported by other witnesses she called during the trial of the case.

The Trial Court denied Respondents/Appellants' motion for directed verdict after hearing Vidhya testify at trial as to her beliefs regarding the ownership of the store.

Secondly, Respondents/Appellants argue that bringing the case was unwarranted because Appellants/Respondents' Complaint contains a number of "false" allegations, "...the falsity of which could easily have been established by documentary evidence that was available by Appellants/Respondents and could have been provided to their counsel prior to filing the action..." (Plaintiffs' Motion for Attorneys' Fees and Costs; R. ____). Respondents/Appellants do not argue that the causes of action for relief against them were incorrectly plead. They do not argue that that if the allegations had been proven true at trial, Appellants/Respondents would not have been entitled to the relief requested in their Complaint. They simply allege that these allegations were not true. The Court heard approximately four days of conflicting testimony as to whether or not these allegations could be proven or not. The Court denied Respondents/Appellants' motions made at the close of the Appellants/Respondents' case and proceeded to allow the trial to proceed. The Court ultimately determined, after hearing all of the evidence, that despite conflicting evidence, Appellants/Respondents had not proven that they were entitled to the relief requested in their Complaint. The mere fact that a Plaintiff does not prove their case to the Court (or a jury's) satisfaction does not warrant the imposition of sanctions against them. The fact that a party "loses" a case does not warrant the imposition of punishment for bringing the case in the first place. Such a holding and ruling would not only be improper, but it would be in derogation to the principles upon which our legal system is grounded.

III. APPELLANTS/RESPONDENTS' SUIT WAS NOT FRIVOLOUS

South Carolina Code Section 15-36-10(C)(2) provides that “unless the Court finds by a preponderance of the evidence that an attorney, party or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party or pro se litigant shall not be sanctioned.” South Carolina Code Section 15-36-10 (C)(2). See, e.g., *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997); *Southeastern Site Prep, LLC et. al. v. Atlantic Coast Builders, et. al.*, 394 S.C.97, 713 S.E. 2d. 650 (Ct. App. 2011). The Act does not define the term “frivolous.”

Under the Restatement, “...a frivolous position one that a lawyer of ordinary competence would recognize as so lacking in merit that there is no substantial possibility that a tribunal would accept it.” *Restatement (Third) of Law Governing Lawyers*, Section 110 (2000). Other jurisdictions follow this very restrictive view of the definition of “frivolous.” *Fronk v. Fowler*, 456 Mass. 317, 923 N.E.2d. 23 (2003) (a claim is frivolous if there is an absence of legal or factual basis for the claim, and if the claim is without even a colorable basis in law); *Cornett v. City of Omaha Police & Fire Retirement System*, 266 Neb. 216, 664 N.W.2d. 23 (2003) (a frivolous action is one in which a litigant asserts a legal position wholly without merit, that is, without rational argument based on law and evidence to support the litigant’s position); *Savona v. Di Giorgio Corp.*, 360 N.J. Super. 55, 821 A.2d. 518 (App. Div. 2003) (a claim will be found “frivolous” only if it was commenced or maintained in bad faith, or the action was without any reasonable basis in law or equity...); *Mark S. Bounds Realty Partners Inc. v. Lawrence*, 34 So.3d. 1224 (Miss. App. 2010) (a claim is frivolous when, objectively speaking, the pleader or movant has no hope for success...); *Riston v. Butler*, 149 Ohio App. 3d. 390, 777 N.E. 2d. 857 (2002) (a claim is frivolous if it is absolutely clear that under the existing law no reasonable lawyer could argue the claims).

Like the Restatement, these jurisdictions require that there be some element of bad faith or complete lack of merit under any possible scenario, before a Court will find a claim was “frivolous” so as to justify the imposition of sanctions. This is consistent with South Carolina case law decided prior to the Act which defined frivolous pleadings or allegations as those which must be impertinent, or nonsensical — trifling with the dignity of the court, and the majesty of the law; such pleas, on which no serious question of fact or law can properly arise. See, *Etiwan Fertilizer Company v. John*, 202 S.C. 29, 24 S.E.2d. 74 (1943).

In this case, Respondents/Appellants cannot prevail in any argument that this case was brought without any reasonable possibility that the court would accept their claims against Appellants/Respondents. Respondents/Appellants cannot establish that these claims were brought without any hope of success, rational argument or an absence of legal and/or factual basis. At no time after Respondents/Appellants commenced their action did Respondents/Appellants move for summary judgment. The matter went to a four day trial where, in addition to the Respondents/Appellants themselves, Appellants/Respondents called a number of witnesses in support of their causes of action for both resulting and/or constructive trusts as to the Clinton Convenience Store as well as the Clinton residence. Evidence came from third parties who were directly involved in these transactions, such as Paul Desai and Praful Patel. While the Court’s order (which is presently on appeal) recognized “conflicting evidence,” the Court ultimately determined that Appellants/Respondents did not carry their burden of proof.

If the Respondents/Appellants believed this case was frivolous and completely without merit, then a motion to dismiss this case or for summary judgment would have been appropriate. Yet, no motion for summary judgment was ever made and the case proceeded to trial. The Appellants/Respondents survived Respondents/Appellants Motions for Directed Verdict at the

close of the Appellants/Respondents' case. The "worst" that can be said about the Appellants/Respondents' claims/case is that they tried a hard case, but ultimately lost (pending appeal). This does not constitute a "frivolous" proceeding or one that where an award of attorney's fees and costs are justified.

IV. THE LOSS OF A SUIT IS NOT SUFFICIENT FOR SANCTIONS

On August 28, 2020, after four days of testimony, the Court issued its order granting judgement for the Respondents/Appellants. The Court's order reflected that despite conflicting testimony and evidence, Appellants/Respondents had not met their burden of proving their entitlement to a constructive or resulting trust. The Court denied Appellants/Respondents' Motion for Reconsideration. This matter is now on appeal in the South Carolina Court of Appeals. Regardless of the outcome of that appeal, the mere "loss" of a case does not subject the "losing" party to sanctions. As Judge Thomas Kemmerlin aptly stated, "obviously the mere loss of a case does not subject a party...to a suit by the winner for sanctions; if it did, the Court System could not function." See, *Southeastern Site Prep LLC v. Atl. Coast Builders*, 394 S.C.97, 713 S.E.2d. 650 (Ct. App. 2011). The mere fact that (at the present), Appellants/Respondents "lost" the above-captioned case will not support an award of costs against them in this matter.

CONCLUSION

In denying the Respondents/Appellants' motion for sanctions, the Court recognized that this was a highly contested and complex case. The Court noted that there were issues of credibility involving witnesses for both parties. The Court stated that the case was factually "very close on weight, but the defendant's (Respondents/Appellants') testimony outweighed (but not substantially) the Plaintiff's (Appellants/Respondents') testimony and evidence. The Court found that none of the factors that would have entitled Respondents/Appellants to sanctions under the

Act were present in this case. While the Appellants/Respondents believe the Trial Court's underlying order granting judgment to the Respondents/Appellants should be reversed, the Appellants/Respondents submit that the order denying Respondents/Appellants' request for sanctions was not clearly erroneous and should be affirmed by the Court in the event that the Trial Court's underlying order is affirmed.

Respectfully submitted,

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July 1, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Vidhyaben R. Patel, Individually and as Co-Personal
Representative of the Estate of Rameshchanda Prabhudas
Patel, and Darshak Kumar Patel, Individually and as
Co-Personal Representative of the Estate of
Rameshchandra Prabhudas Patel, Appellants/Respondents

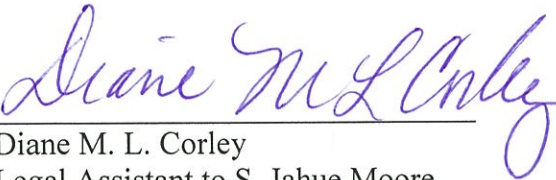
v.

Hardik R. Patel, Anal H. Patel and AAHARVID, LLC, Respondents/Appellants

PROOF OF SERVICE

I, Diane M. L. Corley, an employee of the Moore Taylor Law Firm, P.A., certify that I have served the Appellants/Respondents' Initial Brief of Respondents on Respondents/Appellants by depositing a copy of same in the United States Mail, postage prepaid and via electronic mail (email), on July 1, 2021, addressed to their attorneys of record as follows:

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