

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

Blythewood Oil Co., Inc.)

Plaintiff,)

vs.)

Shinda Singh, Five Rivers, Inc.,)
and Singh, Inc.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Civil Action No. 12-CP-20-356

RECEIVED
AMENDED
ORDER
AUG 27 2021
SC Court of Appeals

This matter came before the Court for a non-jury trial, by consent of the parties, in the above-captioned matter. In a non-jury action, the Court's findings are equivalent to a jury's findings in an action at law. Rule 52(a), S.C.R. Civ. P. instructs a Court in an action tried without a jury to "find the facts specially and state separately its conclusions of law thereon..."

Plaintiff's Exhibits 1-12 as well as Defendants Exhibits 1-4 were entered into evidence without objection, and with the consent of the parties. The exhibits were electronically filed by the Clerk of Court on September 23, 2019. Both parties made Motions for a Directed Verdict at the close of the Plaintiff's case, which were denied by this Court. After the presentation of all evidence by the parties, both Plaintiff and Defendants renewed their motions for verdicts based on the evidence presented at the September 23, 2019 trial. The Court took all motions under advisement. This Court reviewed applicable law, arguments of counsel, and the evidence presented by both parties at the September 23, 2019 trial. See Rule 15(b), S.C.R.Civ.P. (issues not raised by the pleadings but tried by consent of the parties shall be treated as if they had been raised in the pleadings). By Order filed July 17, 2020, this Court found that the Plaintiff was not entitled to recovery from the Defendants pursuant to a claim of unjust enrichment based on

quantum meruit, quasi-contract, or implied by law contract. On July 27, 2020, counsel for the Plaintiff filed a Rule 59(e) Motion for Reconsideration to Alter or Amend Judgment on behalf of Blythewood Oil. However, counsel did not file the motion upon the court.

BACKGROUND

The case was tried in November 2017 before a jury on the following causes of action: (1) negligent misrepresentation; (2) unjust enrichment based on quantum merit, quasi contract, or implied by law contract; (3) breach of contract; (4) breach of contract accompanied by fraudulent act; and (5) fraud. On November 16, 2017, the jury found in favor of the Defendants on all causes except for one. There was a mistrial on the cause of action for unjust enrichment based on quantum merit, quasi contract, or implied by law contract. Subsequently, the parties requested, and the Court agreed to hear the case as a non-jury trial. The Court held the non-jury trial on September 23, 2019.

The dispute between the parties' centers around the complaint made by Plaintiff, Blythewood Oil, Inc., regarding nonpayment for gasoline it delivered to two convenience stores allegedly owned and operated by Defendants. The Plaintiff contends the partnership was composed of four parties: 1) Defendant Shinda Singh, 2) Defendants Five Rivers, Inc., 3) Singh, Inc., and 4) Kabal Singh (represented by separate counsel). Kabal Singh was dismissed as a party during the first trial in November 2017.

Present September 2019 non-jury trial were Tony R. Megna, attorney for Plaintiff, and Linda Jackson, attorney for the Defendants. Plaintiff's representative, Larry Sharpe, II, as corporate director of the company, and the Defendant, Shinda Singh, Individually, and as President of Singh, Inc. and Five Rivers, Inc were also present. Prior to trial, the parties agreed to

remove A.M. P.M. Foodmart, Inc. and A.M. P.M. Foodmart, Inc., No. 2 as Defendants. The Court thus modifies the caption to reflect the remaining parties to the lawsuit.

After hearing the testimony presented by the parties and the witness and reviewing all of the evidence in the case, this Court makes the following findings of fact:

FINDINGS OF FACT

- (1) In April 2007, Defendant Shinda Singh, Defendant Five Rivers, Inc., and Defendant Singh, Inc. together with Kabal Singh entered into a “verbal” partnership to operate two convenience stores in Columbia, S.C.;
- (2) Initially, Kabal Singh, a former Defendant in this case, and another individual were going to buy the stores but they could not get a bank loan;
- (3) Shinda Singh, in his corporate capacity, offered to and did obtain loans from First Citizens Bank to purchase the properties;
- (4) The first store (located at 4225 Hardscrabble Road), was purchased in September 2007 by Singh, Inc. (Plaintiff’s Exhibit 1, paragraph 22). The second store (located at 2409 Percival Road) was purchased in September 2007 by Five Rivers, Inc. (Plaintiff’s Exhibit 1, paragraph 20);
- (5) Due to Kabal Singh’s inability to secure a loan, Shinda Singh is the sole shareholder of Singh, Inc. and Five Rivers Inc.;
- (6) Blythewood Oil Co., Inc., delivered gasoline to the Hardscrabble Road and Percival Road convenience stores from the time the convenience stores opened in 2007 until the last delivery of gasoline to the stores occurring in January 2010;

- (7) From April 2007 until October 2008, Kabal Singh and his son Gurpreet Singh (hereafter Jessie), also a former Defendant in this case, ran the convenience store businesses at the two locations;
- (8) On October 2, 2008, Five Rivers, Inc. entered into a Commercial Lease Agreement, as the Landlord, with Gill and Gas, LLC, as the Tenant, for the lease of the real property located at 2409 Percival Road; Jessie Singh signed the Lease as President of Gill and Gas, LLC evidenced by Plaintiff exhibit 7;
- (9) On October 2, 2008, Singh, Inc. entered into a Commercial Lease Agreement, as the Landlord, with Gill and Gas No. 2, LLC, as the Tenant, for the lease of the real property located at 4225 Hardscrabble Road; Jessie Singh signed the Lease as President of Gill and Gas No. 2, LLC evidenced by Plaintiff exhibit 8;
- (10) The above-referenced leases (paragraphs 8 and 9) did not contain language regarding liability concerning the receipt of gasoline;
- (11) Defendant Shinda Singh did not provide Blythewood Oil with copies of, nor any notice, of the leases as evidenced by Plaintiff exhibit 6;
- (12) On March 18, 2009, Jessie Singh signed a Confidential Commercial/Wholesale Credit Application provided by the Plaintiff for the purchase of gasoline from the Plaintiff for delivery to 2409 Percival Road, Columbia, SC 29223; Jessie Singh guaranteed payment for the gasoline (Defendant's exhibit 2);
- (13) On March 18, 2009, Jessie Singh signed a Confidential Commercial/Wholesale Credit Application provided by Blythewood Oil for the purchase of gasoline from the Plaintiff for delivery to 4229 Hardscrabble Road, Columbia, SC 29223; with this application, Jessie Singh guaranteed payment for the gasoline (Defendant's exhibit 1);

- (14) All gasoline was paid for in a timely manner through October 2008, and June 2009.
- (15) The Plaintiff received multiple bad checks from Jessie Singh and encountered problems with Jessie Singh paying for the gasoline delivered beginning in July 2009. Plaintiff's exhibits 11 and 12 evidence the remaining invoices for delivery of the gasoline to the Hardscrabble Road and Percival Road convenience stores that were unpaid.
- (16) Plaintiff continued to deliver gasoline to the Percival Road and Hardscrabble locations through January of 2010 (Plaintiff's exhibits 11 and 12);
- (17) In March of 2010, the Plaintiff's representative contacted the S.C. Attorney General's Office about the bad checks from Jessie Singh and an investigation was done by Pete Logan;
- (18) The Blythewood Oil company representative informed Mr. Logan that Jessie Singh wrote the bad checks from his bank account;
- (19) The Company representative also admitted that the Plaintiff did not have¹ anything in writing stating that Shinda Singh, Five Rivers, Inc., Singh Incorporated, Inc., or the partnership were liable for the gas delivered to Jessie Singh and his businesses;
- (20) At no time prior to March 2010 did the Plaintiff notify Shinda Singh, either individually or as President of Singh Incorporated, Inc. (Singh, Inc.), Five Rivers, Inc., or any

¹ South Carolina appellate courts have long held that if there is a possibility of contract performance within a year, the contract is not barred by the Statute of Frauds. The record shows that the contract for the delivery and purchase of gasoline from Blythewood Oil, Inc. was performed within the one year period. Thus, the Court finds the Statute of Frauds is not applicable in the case at bar. *See generally Joseph v. Sears Roebuck & Co.* 224 S.C. 105, 111, 77 S.E.2d 583, 586 (1953). *Springob v. Univ. of S.C.*, 407 S.C. 490, 495, 757 S.E.2d 384, 387 (2014).

partnership that Jessie Singh and his businesses owed large sums of money to the Plaintiff for gasoline that was delivered.

CONCLUSIONS OF LAW

After hearing the testimony presented by the parties and the witness and reviewing all of the evidence in the case, this Court makes the following conclusions of law:

a) Partnership Law

- a. Jessie Singh was not represented to be a partner in the existing 2007 partnership.**

The Plaintiff has based the duty or obligation imposed by law in the case at bar on SC partnership law asserting that Jessie Singh was directly involved in the operation of the two convenience stores since the formation of the partnership in 2007, as an agent of the verbal partnership described above. The plaintiff relies on South Carolina Code Ann. § 33-41-380(2) which states:

“When a person has been thus represented to be a partner in an existing partnership or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact with respect to persons who rely upon the representation. When all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.”

South Carolina case law has held that “[a] party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts.” *McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987). The existence of an agency relationship is “determined by the relation, the situation, the conduct, and the declarations of the party sought to be charged as principal.” *Langdale v. Carpets*, 395 S.C. 194, 201, 717 S.E.2d 80, 83 (Ct. App. 2011).

To assert agency as a basis of liability, the plaintiff leans on the *de bene esse* deposition, Plaintiff's Exhibit 5, of Vic Pathania, an employee at one of the convenience stores, as evidence that the Defendant Shinda Singh, Kabal Singh, *and* Kabal's son, Gurpreet Singh (hereafter Jessie Singh) were each part of the partnership to operate the two convenience stores. The plaintiff specifically points to the following statement by Mr. Pathania:

"It was basically just they both bought it, they said they owned the store and they are partner[s]. They both own the store, they are partners and they bought the new store and Jesse needed help...." and "[t]hey told me about that they are partners and wanted me to work at the store."

Plaintiff's Exhibit 5, page 11 lines 8-16 and page 12 lines 3-12 respectively.

"[A]n agency may not be established solely by the declarations and conduct of an alleged agent." *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 565–66, 813 S.E.2d 292, 304 (Ct. App. 2018). The statement by Mr. Pathania that Jesse worked at the store does not establish his agency. Moreover, the statement is a bit ambiguous when determining which parties are being described as owners. However, the following statement also made during the deposition seems to clarify that Mr. Pathania was referring to Shinda Singh and Kabal Singh as owners of the Hardscrabble and Percival stores at inception.

". . .So Shinda asked—they asked me to come to the Hardscrabble store and they were all there and then they discussed that, *Sindah and Kabal*, that they owned the store, they owned both store and they want me to take care of the Percival store."

Plaintiff's Exhibit 5, page 10 lines 9 -14 (*emphasis added*).

Therefore, the evidence in the record does not bind the Defendants based on a theory of agency under the statutory law of South Carolina.

b. The record does not establish that Jessie Singh represented himself as a partner in an existing 2007 partnership.

S.C. Code Ann. § 33–41–380(1) states, a “person who represents himself, or permits another to represent him, to anyone as a partner in an existing partnership or with others not actual partners, is liable to any such person to whom such a representation is made who has, on the faith of the representation, given credit to the actual or apparent partnership.” S.C. Code Ann. § 33–41–380(1). As a general rule, persons who are not partners as to each other are not partners as to third persons. S.C. Code Ann. § 33–41–220 (Law Co-op 1976). However, Section 33–41–380(1) is an exception to the general rule for liability by partners by estoppel. *Young v. Jones*, 816 F. Supp. 1070, 1075–76 (D.S.C. 1992), *aff’d sub nom. Young v. F.D.I.C.*, 103 F.3d 1180 (4th Cir. 1997).

The record does not establish that Jessie Singh represented himself as a partner in an existing 2007 partnership. S.C. Code Ann. § 33–41–380(1) only creates liability for third-persons who, in reliance upon representations as to the existence of a partnership, “[give] credit” to that partnership. S.C. Code Ann. § 33–41–380(1) (Law.Co-op 1976). In the present case, there is no evidence that the gas delivered by Blythewood Oil was extended on the basis of any representation of a partnership existing between Jessie Singh and the Defendants. There is also no evidence that the Plaintiff relied on any act or statement by Jessie Singh to indicate that he was an agent or a partner on behalf of the Defendants, Shinda Singh or Five Rivers, Inc. or Singh Incorporated, Inc. In fact, in March 2009, Jessie Singh completed a Commercial/Wholesale Credit Application provided by Blythewood Oil for the purchase of gasoline listing AM/PM Food Mart as the “Firm Name” and himself as the President. The application includes no mention of the Defendants in the present case. Thus, the facts and the evidence do not support a finding of liability on the basis of estoppel under the statutory law of South Carolina.

b) Unjust enrichment. Quantum meruit.

Plaintiff has failed to prove by a preponderance of the evidence all of the elements necessary to recover under quantum meruit a quantum meruit claim. “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012). Quantum meruit is an equitable doctrine which allows recovery for unjust enrichment under a quasi-contract theory. *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). “The elements of a quantum meruit claim are: (1) a benefit conferred upon the defendant by the plaintiff, (2) realization of that benefit by the defendant, and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010).

Plaintiff argues that Jessie Singh was a partner of the partnership formed April 2007 thereby making Defendants liable for the gasoline. This Court does not agree. In the present case, on October 3, 2008, Singh, Inc., as Landlord entered into two Commercial Lease Agreements for the lease of the real property. Jessie Singh signed the lease as Tenant and President of Gill and Gas, LLC and Gas and Gill, LLC No. 2 for the Percival and Hardscrabble Road convenience stores. On March 18, 2009, Jessie Singh signed a Commercial/Wholesale Credit Application provided by Blythewood Oil for the purchase of gasoline from the Plaintiff for delivery to Hardscrabble and Percival Road stores. According to Page 2 of the application, Jessie Singh guaranteed payment for the gasoline. At this time Plaintiff was put on notice that they were dealing with Jessie Singh. From this period forward, the record and testimony by the Plaintiff’s representative, Mr. Sharpe, reflect that the bad checks were signed by Jessie Singh and were

from his bank account with First Citizens Bank and Trust Company. There was no testimony presented indicating that Defendants were aware that Jessie Singh was writing these checks.

There is no evidence in the record to ascertain that Defendants, Shinda Singh, Five Rivers, Inc., or Singh Incorporated, Inc., 1) received the gasoline from Blythewood Oil Co. Inc., 2) realized any benefit from its receipt, or 3) retained the gasoline without paying its value.

From the testimony at trial, the Court recognizes that the Plaintiff's continued venture with Jessie Singh may have been in good faith and sympathizes with the Plaintiff's predicament. Furthermore, this Court understands how and why the jury may have been hung. However, after intense review of the record and testimony presented, this Court cannot find any legal reasoning that demonstrates that the named Defendants have been unjustly enriched at the expense of the Plaintiff entitling the Plaintiff to a monetary outcome in this case.

CONCLUSION

For the reasons noted herein, this Court finds as a matter of fact and law that based upon the evidence in this case and the applicable law the Plaintiff is not entitled to recovery from the Defendants pursuant to a claim of unjust enrichment based on quantum merit, quasi-contract or implied by law contract. This Court therefore, finds for the Defendants.

IT IS SO ORDERED.

The Honorable DeAndrea Gist Benjamin
Presiding Judge, South Carolina Business Court

July ____, 2020
Columbia, South Carolina



Fairfield Common Pleas

Case Caption: Blythewood Oil Company Inc VS Gurpreet Singh , defendant, et al

Case Number: 2012CP2000356

Type: Order/Amend

So Ordered

s/DeAndrea Gist Benjamin, #2161

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