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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY

CASE NO. 2011-CP-32-1781

APPELLATE CASE NO. 2015-002048

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,

Appellants

v.

Marjorie E. Temple,

Respondent,

RESPONDENT'S MOTION FOR REHEARING

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PETITION FOR REHEARING

The Respondent petitions the Court to reconsider its order dated September 1, 2021, reversing portions of the Order of Judge James O. Spence, Master in Equity for Lexington County.

MEMORANDUM

This petition is based on the following grounds:

1. The Court's order does not take into consideration the relatively short time (30 days) for answering a complaint and that, as a general rule, the sole source of information available to the Lawyer about the case is from the client. Since discovery is limited to matters which are reasonably related to the pleadings, the exploration of a potential claim for fraud or violation of the South Carolina Unfair Trade Practices Act would be hamstrung by not pleading it in the first place. Moreover, amending or supplementing the pleadings more than 30 days after the pleadings close is permitted only by a motion to the Court for leave to do so.

2. Although there may not be a specific time period in which to file a motion for sanctions under Rule 11, SCRCP, the motion must be filed "within a reasonable time." Respondents' motion was not filed until a year had passed from the order granting Summary Judgment. This is an unreasonable long period of time. Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 795 S.E.2d 40 (Ct. App. 2016)

3. The cases consistently grant discretion to the Trial Judge on the imposition of sanctions. Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160, (1996) Culbertson v. Clemens, 322 20, 471 S.E.2d 163 (1996). The standard that the Appellate Court must use is whether there was an abuse of that discretion. This Court was apparently unwilling to apply that standard as "abuse of discretion" does not appear in the opinion. Traditionally trial courts have treated Answers with far more leniency than Complaints. A summons and complaint drags a Defendant into Court. An Answer is filed only after the parties are already in litigation. An Answer must necessarily cast a wider net in order to protect the client's position should discovery disclose defenses that were not immediately apparent at the time of service. The Court's opinion in this case apparently marks a significant departure from existing trial court practice. The Court has, however, issued an unpublished opinion which does not give the bench and bar any guidance that apparent change.

4. The Court has given the Trial Court no guidance as to the nature and extent of the sanctions it expects the Trial Court to impose. Were the Court to impose nominal sanctions or overly harsh sanctions, another appeal would be the likely result.

5. The Court's reliance on Deason v. McWhorter, 112 N.E.3d 1082 (Ind. Ct. App 2018) is misplaced:
   a. The issues in that case are not related to the issues in the case on appeal. The issue of attorney fees as potentially being damages was not addrerssed
   b. The contractual terms in the documents are different.
   c. The Deason case cites Indiana law which is not the same as South Carolina law.
   d. The Deason case was remanded for further proceedings to determine damages but the Court did not identify the type of damages to be determined. Certainly if the Court meant damages to include attorney fees, it would have said so.

6. South Carolina has consistently placed itself in the vanguard of consumer protection. Lane v. Trenholm Builders, 267 S.C. 497., 229 S.E.2d 728 (1976). The Court recognizes that an installment land contract is a "poor man's mortgage" but then goes out of its way to deprive the Appellant of all of the protections that she would have in a mortgage foreclosure. It further punishes her for making a poor decision in agreeing to pay far more than the property was worth.

7. This action was commenced as a foreclosure as specified in Lewis v. Premium Investment Corp., 351 S.C. 167, 568 S.E.2d 361 (2002) and Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct. App. 2006), but, because there was a finding that there was no equity of redemption, stripped the protections of Rule 71. This was error.

The Court should withdraw the opinion and affirm without modification the orders of the Master in Equity.

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