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**Oct 01 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

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The Honorable Keith R. Kelly, Circuit Judge

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Case No. 2020-001385

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Anjay Patel,

Appellant,

v.

Bhavesh Patel and John Doe,

Respondents.

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FINAL BRIEF OF RESPONDENT BHAVESH PATEL

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TABLE OF CONTENTS

Table of Authorities .....ii

Statement of Issues on Appeal .....1

Statement of Case .....1

Facts .....2

Standard of Review .....5

Argument

    I.    THE TRIAL COURT PROPERLY CONSIDERED THE U.S. DISTRICT COURT’S ORDER IN FINDING THAT ANJAY LACKED STANDING.....5

    II.   THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE NO MATERIAL ISSUES OF FACT EXIST.....7

    III.  THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE ANJAY HAD AMPLE TIME AND OPPORTUNITY TO CONDUCT DISCOVERY.....8

Conclusion .....10

TABLE OF AUTHORITIES

CASES

Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....10

Brock v. Brock, 313 S.C. 513, 443 S.E.2d 409 (Ct. App. 1994).....5-6

Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (S.C. 2003).....10

Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002).....5

Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32  
(Ct. App. 2009).....9

Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977).....5

Hancock v. Mid-South Management Company, 381 S.C. 326, 673 S.E.2d 801 (2009).....5

Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 581 S.E.2d 161 (2003).....5

Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res., 345 S.C. 594,  
550 S.E.2d 287, (2001).....5-6

Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010).....6

STATUTES

S.C. Code Ann. § 15-3-530(1) (2019).....7

RULES

Rule 30(a)(1), SCRCP.....9

Rule 30(b)(1), SCRCP.....9

Rule 56(b), SCRCP.....8

Rule 56(c), SCRCP.....5

Rule 56(f), SCRCP.....9

Rule 210(c), SCACR.....7

Rule 210(h), SCACR.....7

## STATEMENT OF ISSUES ON APPEAL

### Appellant's Statement of Issues on Appeal

- I. DID THE COURT PROPERLY INTERPRET THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA TO FIND THAT APPELLANT LACKED STANDING?
- II. DID THE COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS WHEN MATERIAL ISSUES OF FACT EXIST?
- III. DID THE COURT ERR WHEN IT GRANTED SUMMARY JUDGMENT TO THE RESPONDENTS WHEN DISCOVERY WAS ONGOING AND APPELLANT HAD NOT BEEN AFFORDED HAD THE OPPORTUNITY TO FULLY CONDUCT DISCOVERY?

### STATEMENT OF CASE

Appellant Anjay Patel (“Anjay”) filed the summons and complaint in this case November 20, 2019. (R. pp. 12-22.) The complaint alleged the following causes of action: (1) breach of the duty of good faith and fair dealing; (2) breach of duty of care to LLC and its member; (3) breach of duty of loyalty; (4) breach of fiduciary duty; and (5) quantum meruit. (R. p. 13-22.) The record is unclear as to when Anjay served the summons and complaint on Respondent Bhavesh Patel (“Bhavesh”), but Bhavesh filed and served his answer and counterclaim March 9, 2020. (R. pp. 23-36.) Anjay served and filed a reply to the counterclaim April 15, 2020. (R. pp. 37-38.) Bhavesh then filed and served a motion for summary judgment and motion to dismiss Defendant John Doe on August 6, 2020. (R. pp. 39-42.) On August 18, both parties filed affidavits for the Court to consider regarding Bhavesh’s summary judgment motion. The Court held a hearing on Bhavesh’s motion for summary judgment August 19 and each party filed a memorandum in support of its position. The Court then issued an order September 17 granting summary judgment in Bhavesh’s favor and denying the motion to dismiss John Doe. (R. pp. 3-11.)

## FACTS

Bhavesh and Anjay formed Sia Investments (“Sia”) in 2009 for the purpose of owning, operating, managing, and leasing real property and convenience stores. (R. p. 157.) Sia owned or leased interests in five properties by 2011 and leased or sub-leased them all to tenants from whom Sia collected rental income. (R. pp. 158-60.)

In 2011, a federal grand jury indicted Anjay for conspiracy to traffic in contraband cigarettes, conspiracy to commit money laundering, trafficking in contraband cigarettes, and money laundering. On October 26, 2011, a federal magistrate issued a protective order in that criminal action that restrained, prohibited, and enjoined Anjay from attempting, completing, or causing any action or transaction that would affect the marketability, value, or availability of all assets, inventory, and property related to Sia.

Bhavesh entered into multiple agreements with the United States on Sia’s behalf as Sia’s agent after the federal government seized Sia. These agreements provided that Bhavesh, and no one else, could continue operating Sia’s business. Such operation was subject to the supervision and restrictions imposed by the federal government.

In February 2013, Anjay pleaded guilty to conspiracy to distribute contraband cigarettes, conspiracy to commit money laundering, trafficking in contraband cigarettes, promotional money laundering, concealment money laundering, and engaging in monetary transactions involving more than \$10,000.00 in criminal proceeds. The federal court sentenced Anjay to eighty-four months incarceration plus two years of supervised release and ordered him to forfeit substantial assets. (R. pp. 124-27.)

The U.S. District Court entered a preliminary order of forfeiture of certain assets dated August 29, 2013, and then an amended order of forfeiture December 6, 2013. Pursuant to these

forfeiture orders, the following property was forfeited to the United States: the entity known as Sia and all assets, which included (a) \$12,648.69 in U.S. currency; (b) 401 North Main Street, Saluda, SC 29318; (c) 401 Town Center North, McCormick, SC 29835; (d) 200 Hammett Street, Greenville, SC 29609; (e) 699 Arlington Road, Greer, SC 29651; and (f) 2207 Racing Road, Greer, SC 29651. (R. pp. 124-26.)

The United States and Sia entered into a written settlement agreement in May 2014. (R. pp 135-38.) Pursuant to the settlement agreement, Bhavesh personally remitted payment to the United States of \$136,000.00 made payable to the U.S. Department of Justice for forfeiture in lieu of its interest in Sia and all of Sia's assets. (R. p. 150.)

The U.S. District Court entered a second final order of forfeiture dated June 25, 2014, wherein all right, title, and interest in the following described property was forfeited and title vested in the United States: a) \$12,648.69 in U.S. currency; (b) 401 North Main Street, Saluda, SC 29318; (c) 401 Town Center North, McCormick, SC 29835; (d) 200 Hammett Street, Greenville, SC 29609; (e) 699 Arlington Road, Greer, SC 29651; and (f) 2207 Racing Road, Greer, SC 29651. The United States agreed to accept \$136,000.00 from Bhavesh to satisfy the forfeited interest in these assets pursuant to the settlement agreement above. (R. pp. 124-27.)

Anjay consented to the forfeiture by the federal government. He did not request reconsideration of the U.S. District Court's final order or appeal the final order, which became the law of the federal case and extinguished any interest Anjay had in Sia.

In September 2015, Bhavesh, as the sole member of Sia, transferred Sia's assets to Bholenath, Investments, LLC ("Bholenath"), dissolved Sia, and filed Articles of Termination for Sia with the S.C. Secretary of State. (R. p. 157.)

This case is the fifth in a series of actions that Anjay has filed against Bhavesh and various other entities. Anjay filed the first case against Bhavesh and Sia on April 8, 2016, in the Spartanburg County Court of Common Pleas. In that case, Anjay brought the following causes of action: (1) declaratory judgment, (2) conversion, (3) accounting, (4) appointment of a receiver, (5) constructive trust, (6) breach of fiduciary duty, and (7) appointment of a receiver. Circuit Court Judge R. Keith Kelly granted summary judgment in favor of Bhavesh and Sia on these claims June 22, 2017, in an order filed June 26, 2017. (R. pp. 88-93.) After service of that order, Anjay did not seek reconsideration or appeal the final order, which became the law of that case.

Anjay filed three cases December 12, 2016, against Sia and Bholenath in Saluda County Common Pleas, Spartanburg County Common Pleas, and Greenville County Common Pleas. In each case, Anjay brought causes of action for quiet title and alter ego. Circuit judges granted summary judgment in favor of Sia and Bholenath against Anjay in every case. (R. pp. 81-87, 94-106.) After service of each order, Anjay did not seek reconsideration or appeal any of the final orders, which became the law of each case.

Anjay was the sole plaintiff in all of these cases and the current case. The current action and the first Spartanburg action involve Bhavesh as a named defendant with breach of fiduciary duty among the causes of action. The other actions involved Sia and Bholenath, which were or are owned by Bhavesh. All five lawsuits that Anjay filed have sought the recovery of money that Anjay claims he is owed based on his former ownership interest in Sia despite the forfeiture of all right, title, and interest in Sia to the United States pursuant to the second final order of forfeiture dated June 25, 2014. (R. pp. 81-106.)

## STANDARD OF REVIEW

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, make it clear “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. The purpose of summary judgment is to obviate delay where there is no genuine issue as to any material fact. See Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977). In a case where the burden of proof is a preponderance of the evidence, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Management Company, 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009). Appellate courts utilize the same standard of review as the trial court to review the grant of summary judgment. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party below. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

## ARGUMENT

### I. THE TRIAL COURT PROPERLY CONSIDERED THE U.S. DISTRICT COURT’S ORDER IN FINDING THAT ANJAY LACKED STANDING.

It is well settled law in South Carolina that “[s]tanding is a fundamental requirement for instituting an action.” Brock v. Brock, 313 S.C. 513, 519, 443 S.E.2d 409, 412. (Ct. App. 1994). For a plaintiff to possess standing, he must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. Sea Pines Ass’n for the Prot. of Wildlife v. S.C. Dep’t of Natural Res., 345 S.C. 594, 600-01, 550 S.E.2d 287, 291-92

(2001). Once it is determined a Plaintiff has no standing to prosecute, the Court must dismiss the action. Brock, 313 S.C. at 520, 443 S.E.2d at 413.

The U.S. District Court final order dated June 25, 2014, resulted in Anjay forfeiting all his rights in the assets listed above. (R. p. 124-27.) These assets consisted of all of Anjay's rights in Sia. The district court approved the agreement between the U.S. government and Bhavesh for Bhavesh to purchase these assets for \$136,000.00. (R. p. 124-27.) Anjay did not appeal that final order, which he admits in his brief, so it became the law of the case. (Appellate's Brief p. 12.) "An unappealed ruling is the law of the case and requires affirmance." Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010). At that point, Anjay had forfeited all of his interest in Sia. Anjay, therefore, has no standing to complain of Bhavesh's actions related to Sia and its assets.

Contrary to Anjay's argument, the federal court order did not affect Bhavesh's interest in Sia or its assets. The federal court merely approved the agreement that allowed Bhavesh to purchase Anjay's forfeited interest from the federal government. (R. pp. 124-27.) That agreement allowed Bhavesh to purchase Anjay's interest in Sia from the federal government, and the \$136,000.00 purchase price offset money that Anjay owed the federal government because of his criminal activity. The cashier's check used to pay the purchase price noted that B. Patel was its remitter. (R. p. 150.) Anjay lost any right to payment regarding Sia or its assets in 2014 when he forfeited his interest in Sia.

Anjay relies on language from the forfeiture order that "The United States is entitled to an order forfeiting other property of [Anjay] as a substitute for the unavailable property ordered forfeited." (R. pp. 119-20.) The language "other property of [Anjay]" refers to Anjay's interest in Sia, which is what he forfeited to the federal government.

Anjay is correct that once Bhavesh purchased Anjay's forfeited portion of Sia, Bhavesh transferred Sia's assets to Bholenath. This transfer did not relate to expelling Anjay from Sia but was because Bhavesh did not want any association with Anjay, who was a convicted felon. (R. p. 69.)

Anjay argues that he has standing to sue because he is suing for rights that he had prior to the forfeiture. (Appellant's Brief p. 13.) While Bhavesh denies that Anjay has standing in this matter because of the district court's forfeiture order, if Anjay is correct then the statute of limitations had long passed by the time he filed the summons and complaint November 20, 2019. The forfeiture occurred more than five years earlier when the District Court entered its order June 25, 2014. See S.C. Code Ann. § 15-3-530(1) (2019) (providing for a three-year statute of limitations on an action based upon a contract, obligation, or liability, express or implied).

Anjay relies upon something Bhavesh allegedly stated in some tax returns and a draft order presented to the district court in Anjay's criminal case. Anjay did not present any of these documents to the court below so this Court cannot consider them. "The Record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. "Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR.

The trial court correctly found that Anjay has no standing to bring this action because he consented to the forfeiture of his interest in Sia in 2014.

## II. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE NO MATERIAL ISSUES OF FACT EXIST.

The trial court properly granted summary judgment because Anjay forfeited his right in Sia and its assets to the federal government pursuant to the forfeiture order, and Anjay's claims are variations of the same ones he made in his prior four lawsuits. (R. p. 7.) For the reasons stated in

section one, Anjay had no rights to assert in Sia after he forfeited his rights in Sia and its assets more than five years before filing the present case.

Anjay argues that Bhavesh's affidavit creates a material issue of fact as to when Bhavesh expelled Anjay from Sia. Bhavesh's affidavit does not state anything about expelling Anjay from Sia but outlines the process he underwent in purchasing Anjay's interest in Sia from the federal government. (R. pp. 68-71.) Anjay forfeited all rights he had in Sia to the federal government by June 25, 2014, and Bhavesh purchased this interest. (R. pp. 124-27.) Anjay claims that Bhavesh made a statement in a prior affidavit that was inconsistent with the affidavit presented to the trial court regarding Anjay's expulsion from Sia. (Appellant's Brief p. 15.) This statement is not relevant as the forfeiture is the only relevant date, but this Court cannot consider this alleged prior statement by Bhavesh because it was not part of the record at the trial court. See Rule 210, SCACR. Furthermore, Anjay's argument does not make logical sense because if Bhavesh had expelled Anjay from Sia then Anjay would not have had an interest in Sia to forfeit to the government to lessen the amount of money he owed to the federal government because of his criminal conduct.

The facts conclusively show that Anjay forfeited his right in Sia to the federal government in 2014 so he did not have the right to sue Bhavesh in this case filed in 2019 related to an interest in Sia. The trial court, therefore, properly granted Bhavesh summary judgment as no material issues of fact exist.

**III. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE ANJAY HAD AMPLE TIME AND OPPORTUNITY TO CONDUCT DISCOVERY.**

A defending party may move for summary judgment at any time. Rule 56(b), SCRCP. In

the present case, Anjay filed the summons and complaint November 20, 2019. Bhavesh did not file his motion for summary judgment until August 6, 2020—more than eight months later. Bhavesh’s summary judgment, therefore, was filed at a proper time pursuant to the Rules of Civil Procedure and after ample time for the parties to conduct discovery.

A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.

Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009). Guinan was a medical malpractice case in which the court of appeals rejected the plaintiff’s argument that summary judgment was premature because of insufficient time to conduct discovery where the plaintiff received X-rays the day of the summary judgment hearing and never received emergency telephone records. Id.

In the present case, Anjay argues that he was trying to schedule Bhavesh’s deposition when Bhavesh filed the motion for summary judgment. (Appellant’s Brief p. 16.) Anjay did not notice Bhavesh’s deposition so this argument does not have merit. See Rules 30(a)(1) and (b)(1), SCRCF (allowing for a party to take a deposition of any person, including a party, upon oral examination by giving each party ten days’ written notice once a case is commenced). Before the trial court, Anjay requested time to conduct discovery but did not specify anything that he expected to find that would have created a material issue of fact. (Tr. p. 15, ll. 12-19.) If a party requests further discovery or depositions, Rule 56(f) requires that the party opposing summary judgment state reasons in its affidavit as to why it cannot state facts in its affidavit to oppose summary judgment. Rule 56(f), SCRCF. Anjay did not state any such reasons in his affidavits presented to the trial court but instead relied on vague requests for further discovery despite having had more than eight

months to conduct discovery. Anjay has failed to meet his required showing that further discovery would show a dispute as to a material issue of fact would exist. See Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 440 (S.C. 2003).

The Court should defer to the trial court's finding here that further discovery would not affect the summary judgment analysis. See Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001) ("The ruling of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion."). Anjay cannot overcome the facts set out in the record that he lost all interest in Sia when he forfeited his interest to the federal government in 2014 so he had no standing to bring this lawsuit for damages he allegedly suffered based on an interest in Sia. Neither further discovery nor a trial would change these dispositive facts.

#### CONCLUSION

For the reasons stated above and any other reasons that appear in the record, the Court should affirm the trial court's grant of summary judgment in favor of Bhavesh.

Respectfully Submitted,



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Certificate of Counsel

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Counsel for the Appellant hereby certifies that the Final Brief of Appellant and Final Reply Brief of Appellant comply with Rule 211(b).



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