

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Keith R. Kelly, Circuit Judge

Case No. 2020-001385

Bhavesh Patel ,

Respondent,

v.

Anjay Patel

Appellant,

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Appellant Anjay Patel offers this Reply Brief to the Response Brief submitted by Respondent Bhavesh Patel. Appellant brought this case seeking to recover for the failure of Respondent to compensate him for his interest in an LLC the two owned equally. The circuit court found that Appellant lacked standing to recover for the value of his personal interest in the company. Respondent's Reply Brief ignores that questions of fact exist as to when Respondent removed Appellant from SIA, what was forfeited in a federal proceeding, and what it means to have standing in a civil suit.

Appellant has established that Respondent claims to have removed him from SIA prior to the timing of any later forfeiture. Respondent signed an affidavit in March of 2017, stating that shortly after Appellant's federal indictment, Respondent had to remove Appellant from SIA in order to conduct SIA's business. Because of this removal, no later forfeiture could possibly limit Appellant's ability to recover for compensation from the company or his partner, and he unquestionably has standing to sue to recover. If Respondent's sworn affidavit is believed, then payment was due to Appellant shortly after Appellant's indictment in November of 2011 (nearly three years prior to a federal forfeiture order). Respondent's current denial, makes the issue of Appellant's ability to recover a question of fact.

Moreover, regardless of Respondent's misinterpretation of the orders from the federal district court, questions of fact exist about what was actually forfeited and what was purchased back from the government. As set out in Appellant's Initial Brief, the written documents from the federal court show that the government took the entire entity SIA by forfeiture, after no one from SIA made a claim to the company, and then sold the entire company back to SIA. The order did not limit the

forfeiture to Appellant's interest, and Respondent's arguments to the contrary are wrong. Appellant certainly has standing to show that his interest was not separated from the company's when the forfeiture and sale took place and any ruling that prevents such showing was improper.

Appellant is entitled to recover, but even if he were not able to under the facts of this case, he must be given the opportunity to prove that he is. Finding that Appellant lacked standing is not the correct ruling and for that reason the lower court's decision must be vacated. Appellant's suit claims that he is entitled to payment for his interest in SIA after Respondent removed him from the company. No later order could affect Appellant's standing to sue for recovery of the amount owed to him if he can establish that he was removed from the LLC without payment. Similarly, if Appellant can show that the entire entity of SIA was forfeited and his interest was part of the entity sold back to SIA, then he can recover. These are questions of fact and Appellant is entitled to prove them. As a member in an LLC, Anjay has standing to bring the claim for payment of his interest and he does not lose the right to make that claim.

REPLY TO RESPONDENT

Appellant Anjay Patel offers this Reply Brief to the Response Brief submitted by Respondent Bhavesh Patel. Appellant brought this case seeking to recover for the failure of Respondent to compensate him for his interest in an LLC the two owned equally. The circuit court found that Appellant lacked standing to recover for the value of his personal interest in the company after being wrongfully removed from his company, either in 2012 or after the company bought itself back from the federal government. Respondent's Reply Brief ignores that questions of fact exist as to when Respondent removed Appellant from SIA, what was forfeited in a federal proceeding, and what it means to have standing in a civil suit.

Appellant has established that Respondent claims to have removed him from SIA prior to the timing of any later forfeiture. Respondent signed an affidavit in March of 2017, stating that shortly after Appellant's federal indictment, Respondent had to remove Appellant from SIA in order to conduct SIA's business. Because of this removal, no later forfeiture could possibly limit Appellant's ability to recover for compensation from the company or his partner, and he unquestionably has standing to sue to recover. If Respondent's sworn affidavit is believed, then payment was due to Appellant shortly after Appellant's indictment in November of 2011 (nearly three years prior to a federal forfeiture order). Respondent's current denial, makes the issue of Appellant's ability to recover a question of fact.

Even if Respondent had not removed Anjay until after the company purchased itself back from the government, Anjay's standing to bring suit to recover for his removal without compensation is without question. Regardless of Respondent's misinterpretation of the orders from the federal district court, questions of fact exist about what was actually forfeited and what was

purchased back from the government. As set out in Appellant's Initial Brief, the written documents from the federal court show that the government took the entire entity SIA by forfeiture, after no one from SIA made a claim to the company, and then sold the entire company back to SIA. The order did not limit the forfeiture to Appellant's interest, and Respondent's arguments to the contrary are wrong. Appellant certainly has standing to show that his interest was not separated from the company's when the forfeiture and sale took place and any ruling that prevents such showing was improper.

Appellant is entitled to recover, but even if he were not able to under the facts of this case, he must be given the opportunity to prove that he is and his standing to bring this claim is without question. The lower court's decision must be vacated. Appellant's suit claims that he is entitled to payment for his interest in SIA after Respondent removed him from the company. No later order could affect Appellant's standing to sue for recovery of the amount owed to him if he can establish that he was removed from the LLC without payment. Similarly, if Appellant can show that the entire entity of SIA was forfeited and his interest was part of the entity sold back to SIA, then he can recover. These are questions of fact and Appellant is entitled to prove them. As a member in an LLC, Anjay has standing to bring the claim for payment of his interest and he does not lose the right to make that claim.

As to Respondents' second claim that no material issues of fact exist, this flies in the face of well-established cases. South Carolina Rules of Civil Procedure – Rule 56 states that Summary judgment is proper when it is clear there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Summary judgment should be granted when plain, palpable, and undisputable facts exist upon which reasonable minds cannot differ. To determine whether an issue of fact exists, the court must view the evidence and all its inferences in a light most

favorable to the nonmoving party. In the case at hand, there are and were several material facts that were in dispute. Taking Respondent's claim that his affidavit does not state anything about expelling the Appellant, he fails to note that in previous cases he did make several statements about when he expelled the Appellant. In this particular case, as the reader can note from the different briefs, there were and are multiple material facts in dispute.

Additionally, the lower court was required to determine whether any issue of material fact exist and should any fact exist then the court must view those facts in a light most favorable to the non-moving party. In this matter the Appellant can easily show that there are material facts that are in dispute, one fact of many is the timing of when the Respondent expelled the Appellant from a company, which, according to tax documents, he owned 50% of the stock. Respondents' multiple affidavits, provided in different cases make different statements as to when he "terminated" the partnership. In, *Gignilliat v Gignilliat, Savitz & Bettis, LLP*, (382 S.C. 452) the court held that "summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to the conclusion to be drawn from those facts". In this case, not only is there a dispute as to particular facts but there is a dispute as to the conclusion that can be drawn from those facts. Here the Respondent states he expelled the Appellant after he purchased the assets from the Federal Govt. However, there is a dispute as to whose assets he was purchasing and where the funds came from. There is a dispute as to whether he paid the government for the Appellant's assets or interest in the LLC, or whether he purchased his own assets from the Government.

As to Respondent's third claim, that there was ample time and opportunity to conduct discovery, there is no set time from when discovery may be conducted. As previously pointed out, the case was less than a year old and the attorney of record had been protected by the court for most of the year for medical reasons. Additionally, there was the slight matter of a pandemic in which

offices were closed. Those reasons alone are good reasons as to why discovery was late in getting started. However, in several cases the courts have held that “because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a ‘full and fair’ opportunity to complete discovery.”

As to why further discovery would uncover additional relevant evidence and create a genuine issue of material facts, it was pointed that during the hearing that Respondent’s attorney presented a letter to which Appellant had not been privy to and would have or should have had the opportunity to review during a normal discovery process. Appellant’s discovery rights were shut down upon granting of Summary Judgment. Previous cases have all stated that “Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” In the case at hand and due to circumstances beyond the control of all parties, (Appellant’s attorney had Court protection for a majority of 2020 due to being confined to his bed after back surgery and the Pandemic) the Appellant had not been given the chance to begin discovery much less to complete discovery.

All of the arguments boil down to, why jump to Summary Judgment and prevent the Appellant from completing discovery. Are there more documents that Respondent is in possession that he has failed to provide the Appellant, similar to the document he provided the court the day of the hearing, to which the Appellant had not been provided or seen?

CONCLUSION

Insofar as the discovery process, it is well founded that discovery is an ongoing process, Respondent's actions during the Summary Judgment hearing proved that there are documents to which they rely upon but have not provided to the Appellant. There were very sound medical reasons as to why discovery had not started until the day of the hearing, a pandemic and (Court Protected) back surgery of Appellant's attorney, which caused the attorney to be bed ridden for most of 2020 were and are sound reasons as to why discovery was late in getting started. It is well found that before Summary Judgment is granted discovery should have been completed. In this matter, the Respondent could have waited a few more months for discovery to have been completed and the lower court should have ruled that Summary Judgment in this matter was premature.

As to the standing issue, unjust enrichment and loss of assets that were in the Appellant's name, provide him with standing. The appellant deserves his day in court. Finally, as to the Trial Court's granting of Summary Judgment, based on the briefs, alone, it can be noted that material facts in dispute do exist and have existed prior to the granting of Summary Judgment. Based on the interpretation of those material facts and that they differ, the Court should not have granted Summary Judgment.

For all of the foregoing reasons, the Order Granting Summary Judgment should be reversed and this matter remanding back to the lower court to continue the discovery process and allow parties to investigate more facts to reach a determination as to whether the Respondent was unjustly enriched or whether, as Respondent states, the Appellant's interest were purchased from the Federal Government. The rights of the Appellant are being extinguished without his ability to conduct

discovery and have a fair trial. Simply reversing the Summary Judgment should then provide the opportunity to complete discovery. Doing so is the only fair and just outcome for all involved.

Respectfully submitted,

By: s/John C. Strickland

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