

RECEIVED

Sep 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Marvin H. Dukes, III, Circuit Court Judge

CIRCUIT COURT CASE NO.: 2015-CP-07-02722

APPELLATE CASE NO. 2020-001309

Colleton River Plantation Club, Inc.

Respondent-Appellant,

vs.

Joel S. Lee,

Appellant-Respondent.

RESPONDENT-APPELLANT
COLLETON RIVER PLANTATION CLUB, INC.'S FINAL REPLY BRIEF

/s/ S. Harrison Williams

Barry L. Johnson, Attorney at Law
S. Harrison Williams, Attorney at Law
William Lamar Johnson, II, Attorney at Law
JOHNSON & DAVIS, PA
The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121
Barry@jd-pa.com
Harrison@jd-pa.com
Lamar@jd-pa.com

*Attorneys for Respondent-Appellant,
Colleton River Club Plantation, Inc.*

Bluffton, SC
September 21, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. Reply to Statement of Facts..... 1

II. Reply to Standard of Review..... 2

III. Fraudulent Intention Element 3

CONCLUSION..... 4

TABLE OF AUTHORITIES

Cases

State v. Buyers Service Co., 292 S.C.426, 357 S.E.2d 15 (1987)..... 4

Respondent-Appellant Colleton River Plantation Club (“Colleton”) submits this brief in reply to Appellant-Respondent’s Initial Response Brief.

I. Reply to Statement of Facts

In this Reply Brief, Colleton takes issue with two statements made by Lee in his response brief that are inaccurate and misleading to this court.¹

First, Lee’s statement that the “deed is completely in compliance with South Carolina law” is simply untrue. (Lee Response Br. 2 &4). As established at trial, stated in the Trial Order, and cited in Colleton’s initial brief, the deed that Lee signed and recorded to transfer the at-issue Lot from himself to Bluffton Properties, LLC was prepared by attorney Thomas Burke who is not, and has never been, a licensed South Carolina attorney. (R. p. 13). As established in *State v. Buyers Service Co.*, 292 S.C.426, 357 S.E.2d 15 (1987), the preparation of deeds and the recording of deeds is considered the practice of law in South Carolina, and Thomas Burke’s actions, at the direction of Lee, to prepare and direct the Beaufort County ROD office to file the deed, was the unauthorized practice of law as Thomas Burke was not licensed in South Carolina as an attorney. Thus, Lee’s deed was not completely in compliance with South Carolina law as he argues in his brief.

Second, Lee attempts to mislead this Court into thinking that Colleton is seeking to make a double recovery in this case. That is, Lee argues that Colleton already has a judgment against Bluffton Properties, LLC and is now trying to secure a judgement against Lee for the same debt. (Lee Response Br. 4). However, what Lee’s argument conveniently omits is that the Bluffton

¹ Additionally, Colleton disputes Lee’s argument on page 14 of his response brief wherein Lee alleges that Colleton’s counsel is misquoting parts of the record and/or fabricating quotations. These quotations are clearly from Colleton’s motion for reconsideration in this case, which is part of the record, and the quotations have a factual basis in the deposition and trial testimony in the record. In accordance with the South Carolina Appellate Court Rules, all proper citations to the record will be included in Colleton’s final brief.

Properties, LLC that Colleton has a judgment against is not the same Bluffton Properties, LLC that Lee used as a either a shell company, as Colleton argues, or for estate planning purposes and/or for giving gifts to his friend, as Lee variously argues. (R. pp. 11, 184, 204).

The Bluffton Properties, LLC that Colleton sued was a South Carolina LLC that Colleton located though a search of the South Carolina Secretary of State's website. Colleton used the information that it had at the time, a deed, to try and find the party who was joint and severally responsible with Lee to pay the assessments for the Lot. Colleton filed suit against the South Carolina Bluffton Properties, LLC, the entity defaulted in the suit, and Colleton was awarded a useless judgment.² It was later that Colleton discovered that the Bluffton Properties, LLC that was the grantee in Lee's deed was a Nevada LLC.³

Lee would have this Court believe that Colleton already has a judgment against Bluffton Properties, LLC and is attempting to make a double recovery in this case. However, this is simply untrue, and Lee's argument does not negate the fact that Lee is jointly and severally liable for the assessments according to the plain language of the covenants, as Colleton argues in its response brief. (R. p. 14).

II. Reply to Standard of Review

Lee argues in his brief that Colleton has mischaracterized its argument in arguing that the Master's denial of Colleton's cause of action for breach of contract accompanied by a fraudulent act was an error of law. Lee states that Colleton is just trying to reargue the case and persuade this Court to give different weight to the evidence than the master. However, this is simply not the case. As argued in Colleton's initial brief, Colleton asks this Court to correct the error of law by

² Order of Judgment in Beaufort County, South Carolina Court of Common Pleas case number 2014-CA-07-02827.

³ Lee's (Nevada) Bluffton Properties, LLC is not authorized to do business in South Carolina, and according to the Nevada Secretary of State the LLC has been terminated for failure to abide by Nevada statutory requirements.

the master wherein the master, in the Trial Order, found evidence that met all the elements for the cause of action for breach of contract accompanied by a fraudulent act, but the Master failed to rule in favor of Colleton on its cause of action. Stated another way, Colleton argues that the Master misapprehended the legal elements of Colleton's cause of action for breach of contract accompanied by a fraudulent act. (Lee Response Br. 9).

III. Fraudulent Intention Element

The main part of Lee's response brief argument is Lee reciting each of the findings of fact from the Trial Order that Colleton cites in its initial brief to try and give those facts a different meaning by arguing them individually in a vacuum. Accordingly, if one was to read each of these findings of fact without taking the others into account, Lee's argument may succeed. However, this is not reality, and when the facts are read together Lee's fraudulent intention becomes clear, that is Lee's intent to transfer the Lot into (Nevada) Bluffton Properties, LLC in violation of the covenants and for the sole purpose of avoiding his financial obligations to Colleton.

When considering the following facts together, Lee's fraudulent intention is clear: Lee is a trained lawyer and longtime real estate developer (R. p. 12), Lee has purchased many similar lots in the Bluffton area that are subject to assessments and restrictive covenants (R. p.13), the transfer to Bluffton Properties, LLC was for no consideration (R. p. 13), the transfer was without the required notice to Colleton (R. p. 12), the real estate transfer was completed by Lee's friend and attorney who was not licensed in South Carolina (R. p.13), and the testimony at trial shows that Lee and Burke could not even agree on who the owner of Bluffton Properties, LLC was (R. pp. 184, 204). Lee' fraudulent intention is clear that he was trying to avoid his contractual obligations to Colleton by transferring the Lot into Bluffton Properties, LLC all in violation of his contractual obligation to Colleton and with the intent to defraud Colleton.

CONCLUSION

Colleton respectfully requests this court reverse the Master's finding with regard to his denial of Colleton's cause of action for breach of contract accompanied by a fraudulent act and to remand this action for a further damages hearing. Additionally, Colleton hereby incorporates by reference the arguments contained in its other briefs filed in this matter.