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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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,

PETITION FOR WRIT OF CERTIORARI

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STATUTE

South Carolina Unfair Trade Practices Act 2

RULES

Rule 11, SCRCP 2

Rule 71, SCRCP

CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on October 20, 2021.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in reversing the denial of the issuance of sanctions by the Trial Court?

2. Did the Court of Appeals err in reversing the treatment of attorney fees by the Trial Court?

3. Did the Court of Appeals err in deciding issues of first impression by issuing an Unpublished Opinion?

STATEMENT OF THE CASE

This is an action to foreclose a document entitled "Conditional Sales Agreement Bond For Title (Fixed Rate Payments)." Despite its fancy title, the document creates an Installment Land Contract.

The Respondent adopts the Statement of the Case filed by the Appellant with the following additions.

In July, 2014, the Respondent conceded that there was no equity in the property. Pursuant to Lewis v. Premium Investment Corporation, 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), on August 5, 2014, the Master signed an Order terminating the Respondent's interest in the Contract because there was no equity in the property.

On April 17, 2014, the Appellants filed a motion seeking a separate award of attorneys fees as a money judgment.

On June 4, 2015, the Master signed and filed an Order stating that pursuant to Rule 71, SCRCP, the attorney fees must be added to the contractual debt to determine whether there is equity in the property. The Master ruled that the Appellants were not entitled to a separate judgment for an award of attorneys fees and in addition, there was no right to obtain a deficiency judgment in the foreclosure of an Installment Land Contract..

The Judge also declined to impose sanctions pursuant to Rule 11.

The Appellants filed a Motion to Alter Judgment on June 26, 2015.

The Judge denied the Motion on September 1, 2015.

On September 28, 2015, the Appellants filed this appeal.

On September 1, 2021, the Court of Appeals, in an unpublished opinion revised the denial of sanctions pursuant to Rule 11.

The Court of Appeals also reversed the Trial Court's treatment of attorney fees.

The Court remanded the case to the Trial Court determine the sanctions to be imposed and the amount of attorney fees to be awarded to the Plaintiffs as a money judgment.

ARGUMENT

1. Did the Court of Appeals err in reversing the denial of the issuance of sanctions by the Trial Court?

The Court of Appeals erred in determining that sanctions should be imposed on the Appellant and/or her attorneys.

The Court's opinion 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 consent of the opposing party (unlikely to be obtained) a motion to the Court for leave to do so.

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 more than 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)

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 to determine 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 hauls a Defendant into Court. Plaintiffs have the luxury of the time permitted under the Statute of Limitations to develop the facts. 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. Counsel's experience has been that the Defense bar pleads a "laundry list" of defenses, many of which are simply superfluous (for example, pleading the statute of limitation when the events all took place in the same year the suit was brought, pleading waiver, estoppel and unclean hands with no facts supporting any defense, "reserving any additional defenses and/or affirmative defenses as may be available or revealed to the Defendant during the course of its investigation and/or discovery") The Court has, however, issued an unpublished opinion which does not give the bench and bar any guidance that the Courts should be much more strict.

The Court has also not given the Trial Court any 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.

2. Did the Court of Appeals err in reversing the treatment of attorney fees by the Trial

Court?

The Court of Appeals determined that attorney fees were to be awarded.

The Court's reliance on Deason v. McWhorter, 112 N.E.3d 1082 (Ind. Ct. App 2018) is misplaced:

The issues in that case are not remotely related to the issues in the case on appeal. The issue of attorney fees as potentially being damages was not addressed in that case.

The contractual terms in the documents are different.

The Deason case cites only Indiana law which is not the same as South Carolina law.

The court in Deason remanded the matter 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.

The Court makes an unwarranted distinction between foreclosure as a remedy and forfeiture. As evident by its failure to cite any South Carolina authority to that effect, the Court erred. There should be no distinction between the two remedies sought.

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 recognized 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 had in a mortgage foreclosure. It further punishes her for making a poor decision in agreeing to pay far more than the property was worth.

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, it stripped the Defendant of the protections of Rule 71, SCRCP. This was error.

3. Did the Court of Appeals err in deciding issues of first impression by issuing an Unpublished Opinion?

Counsel has noticed that the Court of Appeals is more frequently deciding issue of

first impression in unpublished opinions.

In Brown v. Spring Valley HOA 2016-UP-343, the Court determined for the first time that a Homeowners Association could issue fines for violation of restrictive covenants.

In Brooks v. Velocity Powersports, 2021-UP-400, the Court decided novels questions under the South Carolina Unfair Trade Practices Act.

In other several cases, the Court has decided discovery issues.

While an unpublished opinion does decided the issues between the parties, the opinion can not be used as precedent for any other case. The purpose of appellate opinions is to give the bench and bar guidance about the law and how to deal with issues. Using unpublished opinions undermines this purpose. Counsel concedes that there are many cases in which an unpublished opinion is appropriate especially when there are no unique issues (many termination of parental rights cases and many criminal appeals, for example). This case is not such a candidate.

CONCLUSION

The Court should grant the writ and reverse the Court of Appeals, thus ending the case.

In the alternative, the Court should grant the writ and deal with the issues in a published opinion that the bench and bar will know that the rules governing pleadings, especially answers, have changed.

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PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Writ of Certiorari, by emailing it, on November 19, 2021, addressed to the attorney of record, Frederick I. Hall, III, rick@sctrialattorneys.com.

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